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HOUSE OF REPRESENTATIVES

I certify that the attached is a true and
correct copy of HB 1585 which
was filed of record on 3-9-83
and referred to the committee on:

Natural Resources

Betty Murray

Clerk of the House

FILED MAR 9 1983

By Craddick

H.B. No. 1585

A BILL TO BE ENTITLED

AN ACT

relating to the jurisdiction, powers, and duties of and the
enforcement by the Texas Department of Water Resources; providing
penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Sections 11.132, 11.173, 16.052, and 50.372,
Water Code, are amended to read as follows:

Sec. 11.132. NOTICE [~~OF--HEARING~~]. (a) Notice shall be
given to the persons who in the judgment of the commission may be
affected by an application, including those persons listed in
Subdivision (2), Subsection (d), of this section. The commission,
on the motion of a commissioner or on the request of the executive
director or any affected person, shall hold a public hearing on the
application. [~~The commission shall give notice of the hearing on~~
~~the application as prescribed by this section.~~

[~~(b)--In the notice, the commission shall:~~

[~~(1)--state the name and address of the applicant,~~

[~~(2)--state the date the application was filed,~~

[~~(3)--state the purpose and extent of the proposed~~
~~appropriation of water,~~

[~~(4)--identify the source of supply and the place where~~
~~the water is to be stored or taken or diverted from the source of~~
~~supply,~~

[~~(5)--specify the time and place of the hearing, and~~

1 [~~(6)~~--give--any--additional--information--the--commission
2 ~~considers-necessary.~~]

3 **(b)** [~~(e)~~] If the proposed use is for irrigation, the
4 commission shall include in the notice a general description of the
5 location and area of the land to be irrigated.

6 **(c)** In the notice, the commission shall:

7 **(1)** state the name and address of the applicant;

8 **(2)** state the date the application was filed;

9 **(3)** state the purpose and extent of the proposed
10 appropriation of water;

11 **(4)** identify the source of supply and the place where
12 the water is to be stored or taken or diverted from the source of
13 supply;

14 **(5)** specify the time and location where the commission
15 will consider the application; and

16 **(6)** give any additional information the commission
17 considers necessary.

18 **(d)** The commission may act on the application without
19 holding a public hearing if all of the following conditions are
20 met:

21 **(1)** not less than 30 days before the date of action on
22 the application by the commission, the applicant has published the
23 commission's notice of the application at least once in a newspaper
24 regularly published or circulated within the section of the state
25 where the source of water is located;

26 **(2)** not less than 30 days before the date of action on
27 the application by the commission, the commission mails a copy of

1 the notice by first-class mail, postage prepaid, to:

2 (A) each claimant or appropriator of water from
3 the source of water supply, the record of whose claim or
4 appropriation has been filed in the office of the commission; and

5 (B) all navigation districts within the
6 watershed concerned; and

7 (3) within 30 days after the date of the newspaper
8 publication of the commission's notice, a public hearing has not
9 been requested in writing by a commissioner, the executive
10 director, or an affected person who objects to the application.

11 (e) If the commission calls a hearing on an application, the
12 inadvertant failure of the commission to mail a notice under
13 Subdivision (2), Subsection (d) of this section to a navigation
14 district that is not a claimant or appropriator of water may not
15 prevent the hearing of the application.

16 (f) If, on the date specified in the notice prescribed by
17 Subsection (c) of this section, the commission determines that a
18 public hearing must be held, the matter shall be remanded for
19 hearing without the necessity of issuing further notice other than
20 advising all parties of the time and place where the hearing is to
21 convene. [The--notice--shall--be--published--once--a-week-for-two
22 consecutive-weeks-before-the-date-stated--in--the--notice--for--the
23 hearing--in--some--newspaper--having--a--general-circulation-in-the
24 section-of-the-state-where-the-source-of-water-is-located-

25 [(e) --The-commission-shall-also-mail-a-copy-of-the-notice--by
26 first-class-mail,-postage-prepaid,-to-each-claimant-or-appropriator
27 of-water-from-the-source-of-water-supply,-the-record-of-whose-claim

er--appropriation--has--been--filed--in--the--office--of--the--commission--
The--notice--shall--also--be--mailed--by--first--class--mail,--postage
prepaid,--to--all--navigation--districts--within--the--watershed
concerned--The--inadvertent--failure--of--the--commission--to--mail--a
notice--to--a--navigation--district--which--is--not--a--claimant--or
appropriator--of--water--does--not--prevent--the--hearing--on--the
application--

[~~(f)~~--The--notice--shall--be--mailed--and--first--published--not--less
than--20--days--before--the--date--set--for--the--hearing--]

Sec. 11.173. CANCELLATION IN WHOLE. (a) If no part of the
water authorized to be appropriated under a permit, certified
filing, or certificate of adjudication has been put to beneficial
use at any time during the 10-year period immediately preceding the
cancellation proceedings authorized by this subchapter, then the
appropriation is presumed to have been wilfully abandoned, and the
permit, certified filing, or certificate of adjudication is subject
to cancellation in whole as provided by this subchapter.

(b) Cancellation proceedings for failure to utilize water
under a permit for which time limitations for commencement and
completion of construction of a storage reservoir are set by the
commission under Section 11.145 of this code and for which
construction has not begun or been completed shall be brought under
Section 11.146 of this code, and not under this subchapter.

Sec. 16.052. INTERBASIN WATER TRANSFER. The executive
director shall not prepare or formulate a plan which contemplates
or results in the removal of state [surface] water from the river
basin of origin and its adjoining coastal basins if the water

1 supply involved will be required for reasonably foreseeable water
2 supply requirements within the river basin of origin and its
3 adjoining coastal basins during the next ensuing 50-year period,
4 except on a temporary, interim basis.

5 Sec. 50.372. FORM OF AUDIT. (a) All audits required by
6 Subsection (a), Section 50.371, of this code shall be performed
7 according to the generally accepted auditing standards of the
8 American Institute of Certified Public Accountants.

9 (b) The audit report shall include the audited financial
10 statements presented in conformity with the American Institute of
11 Certified Public Accountants' generally accepted accounting
12 principles and the independent auditor's opinion regarding those
13 financial statements.

14 (c) The executive director shall adopt an accounting and
15 auditing manual to be used by districts to comply with Subsection
16 (a), Section 50.371, of this code.

17 (d) If any part of the manual is inconsistent with the
18 American Institute of Certified Public Accountants' generally
19 accepted auditing standards or generally accepted accounting
20 principles, the American Institute of Certified Public Accountants'
21 standards and principles prevail. [The-executive-director-shall
22 adopt-an-accounting-and-auditing-manual,-and--except--as--otherwise
23 provided--by-this-manual,-the-audit-shall-be-performed-according-to
24 the-generally-accepted-auditing-standards-adopted-by--the--American
25 Institute--of-Certified-Public-Accountants,-hereinafter-referred-to
26 as-generally-accepted-auditing-standards,-and--shall--include--the
27 auditor's--representation--that--the-financial-statements-have-been

1 prepared--in--accordance---with---generally---accepted---accounting
2 principles-as-adopted-by-the-American-Institute-of-Certified-Public
3 Accountants,---hereinafter---referred---to--as--generally--accepted
4 accounting-principles.]

5 SECTION 2. (a) Section 26.122, Water Code (the text of
6 which was to be effective until delegation of NPDES permit
7 authority), is amended to read as follows:

8 Sec. 26.122. CIVIL PENALTY. A person who violates any
9 provision of this chapter or any rule, permit, or order of the
10 department is subject to a civil penalty of not less than \$100
11 [~~\$50~~] nor more than \$10,000 [~~\$1,000~~] for each act of violation and
12 for each day of violation to be recovered as provided in this
13 subchapter.

14 (b) The delegation of NPDES permit authority does not affect
15 Section 26.122, Water Code, as amended by Subsection (a) of this
16 section.

17 SECTION 3. Subsection (b), Section 11.085, Water Code, is
18 amended to read as follows:

19 (b) No person may transfer state water beyond the river
20 basin of origin and its adjoining coastal basins [~~from--one~~
21 ~~watershed--to--another~~] without first applying for and receiving a
22 permit from the commission to do so. Before issuing such a
23 permit, the commission shall hold a hearing to determine the rights
24 that might be affected by the transfer. The commission shall give
25 notice and hold the hearing in the manner prescribed by its
26 procedural rules.

27 SECTION 4. Subsection (a), Section 11.134, Water Code, is

1 amended to read as follows:

2 (a) After consideration of the application is complete [~~the~~
3 ~~hearing~~], the commission shall make a written decision granting or
4 denying the application. The application may be granted or denied
5 in whole or in part, and, if granted, may be for a specified term
6 of years.

7 SECTION 5. Subsections (d) and (f), Section 11.143, Water
8 Code, are amended to read as follows:

9 (d) Except as otherwise specifically provided by this
10 subsection, before [~~Before~~] the commission may approve the
11 application and issue the permit, it shall give notice and hold a
12 hearing as prescribed by this section. The commission may act on
13 the application without holding a public hearing if all of the
14 following conditions are met:

15 (1) not less than 30 days before the date of action on
16 the application by the commission, the applicant has published the
17 commission's notice of the application at least once in a newspaper
18 regularly published or circulated within the section of the state
19 where the source of water is located;

20 (2) not less than 30 days before the date of action on
21 the application by the commission, the commission mails a copy of
22 the notice by first-class mail, postage prepaid, to each person
23 whose claim or appropriation has been filed with the department and
24 whose diversion point is downstream from that described in the
25 application; and

26 (3) within 30 days after the date of the newspaper
27 publication of the commission's notice, a public hearing is not

1 requested in writing by a commissioner, the executive director, or
2 an affected person who objects to the application.

3 (f) If on the date specified in the notice prescribed by
4 Subsection (d) of this section, the commission determines that a
5 public hearing must be held, the matter shall be remanded for
6 hearing without the necessity of issuing further notice other than
7 advising all parties of the time and place where the hearing is to
8 convene. [The--notice--shall--be--published--only--once,--at--least--20
9 days--before--the--date--stated--in--the--notice--for--the--hearing--on--the
10 application,--in--a--newspaper--having--general--circulation--in--the
11 county--where--the--dam--or--reservoir--is--located.---At--least--15--days
12 before--the--date--set--for--the--hearing,--the--commission--shall--transmit
13 a--copy--of--the--notice--by--first--class--mail--to--each--person--whose--claim
14 or--appropriation--has--been--filed--with--the--department--and--whose
15 diversion---point---is---downstream--from--that--described--in--the
16 application.]

17 SECTION 6. Subsection (b), Section 12.113, Water Code, is
18 amended to read as follows:

19 (b) The department shall deposit all costs collected under
20 Subchapter G [F], Chapter 11 of this code in the State Treasury to
21 the credit of the water rights administration fund, from which the
22 department shall pay all expenses necessary to efficiently
23 administer and perform the duties described in Sections 11.325
24 through 11.335 of this code.

25 SECTION 7. Section 15.104, Water Code, is amended to read as
26 follows:

27 Sec. 15.104. CERTIFICATE OF EXECUTIVE DIRECTOR [~~COMMISSION~~]

1 OR APPROVAL BY EXECUTIVE DIRECTOR [~~COMMISSION~~]. (a) Except as
2 provided by Subsection (b) of this section, the board shall not
3 deliver funds pursuant to an application for financial assistance
4 from the loan fund until the executive director has furnished the
5 board a resolution [~~political-subdivision-has-furnished-the-board-a~~
6 ~~resolution-adopted-by-the-commission~~] certifying:

7 (1) that an applicant proposing surface-water
8 development has the necessary water right authorizing it to
9 appropriate and use the water that the project will provide; or

10 (2) that an applicant proposing underground water
11 development has the right to use water that the project will
12 provide.

13 (b) If an applicant includes a proposal for a waste water
14 treatment plant, the part of the application relating to the waste
15 water treatment plant does not need to be certified by the
16 commission, but the board may not deliver funds for the waste water
17 treatment plant until the political subdivision has obtained
18 written evidence of approval of the plans for the waste water
19 treatment plant from the executive director.

20 SECTION 8. Section 17.123, Water Code, is amended to read as
21 follows:

22 Sec. 17.123. CERTIFICATE OF EXECUTIVE DIRECTOR [~~COMMISSION~~]
23 OR APPROVAL BY EXECUTIVE DIRECTOR [~~COMMISSION~~]. (a) Except as
24 provided in Subsection (b) of this section, the board shall not
25 deliver funds pursuant to an application for financial assistance
26 until the executive director has furnished the board a resolution
27 [~~political-subdivision-has-furnished-the-board-a-resolution-adopted~~

1 ~~by-the-commission]~~ certifying:

2 (1) that an applicant proposing surface-water
3 development has the necessary water right authorizing it to
4 appropriate and use the water which the project will provide; or

5 (2) that an applicant proposing underground water
6 development has the right to use water that the project will
7 provide.

8 (b) If an application includes a proposal for a waste water
9 treatment plant, the part of the application relating to the waste
10 water treatment plant does not need to be certified by the
11 commission, but the board may not deliver funds for the waste water
12 treatment plant until the political subdivision has obtained
13 written evidence of approval of the plans for the waste water
14 treatment plant from the executive director.

15 SECTION 9. Subsection (a), Section 26.022, Water Code, is
16 amended to read as follows:

17 (a) Except as otherwise provided in Sections 26.0191,
18 26.028, and 26.176 of this code, the provisions of this section
19 apply to all hearings conducted in compliance with this chapter.

20 SECTION 10. (a) Section 26.123, Water Code (the text of
21 which was to be effective until delegation of NPDES permit
22 authority), is amended to read as follows:

23 Sec. 26.123. ENFORCEMENT BY DEPARTMENT. (a) Whenever it
24 appears that a person has violated or is violating or is
25 threatening to violate any provision of this chapter or any rule,
26 permit, or order of the department, then the executive director may
27 have a civil suit instituted in a district court for injunctive

1 relief to restrain the person from continuing the violation or
2 threat of violation, or for the assessment and recovery of a civil
3 penalty of not less than \$100 [~~\$50~~] nor more than \$10,000 [~~\$1,000~~]
4 for each act of violation and for each day of violation, or for
5 both injunctive relief and civil penalty.

6 (b) On application for injunctive relief and a finding that
7 a person is violating or threatening to violate any provision of
8 this chapter or any rule, permit, or order of the department, the
9 district court shall grant the injunctive relief the facts may
10 warrant.

11 (c) At the request of the executive director, the attorney
12 general shall institute and conduct a suit in the name of the State
13 of Texas for injunctive relief or to recover the civil penalty or
14 for both injunctive relief and penalty as authorized in Subsection
15 (a) of this section.

16 (b) The delegation of NPDES permit authority does not affect
17 Section 26.123, Water Code, as amended by Subsection (a) of this
18 section.

19 SECTION 11. Subdivision (3), Section 26.211, Water Code, is
20 amended to read as follows:

21 (3) "Person" means an individual, [~~or~~] private
22 corporation, organization, government or governmental subdivision
23 or agency, business trust, partnership, association, or any other
24 legal entity.

25 SECTION 12. Subsection (c), Section 26.303, Water Code, is
26 amended to read as follows:

27 (c) If the department enters into a contract or cooperative

1 agreement under Section 104(c)(3) of the environmental response
2 law, the board may [~~shall~~] include in the contract or agreement
3 terms and conditions:

4 (1) to assure future maintenance of the removal and
5 remedial actions provided for the expected life of those actions as
6 determined by the federal government;

7 (2) to assure the availability of a hazardous waste
8 disposal facility acceptable to the federal government that
9 complies with Subtitle C of the federal Solid Waste Disposal Act
10 (42 U.S.C. 6921 et seq.) for any necessary off-site storage,
11 destruction, treatment, or secure disposition of the hazardous
12 substances, pollutants, or contaminants; and

13 (3) to assure payment by the state of:

14 (A) 10 percent of the costs of the removal and
15 remedial actions, including future maintenance; or

16 (B) at least 50 percent or more of the costs as
17 determined appropriate by the federal government, taking into
18 account the degree of responsibility of the state for any amount
19 spent in response to a release at a disposal facility that was
20 owned by the state at the time of disposal of hazardous substances
21 at the disposal facility.

22 SECTION 13. Subsection (b), Section 26.304, Water Code, is
23 amended to read as follows:

24 (b) The fund shall include money appropriated to it by the
25 legislature, [and] any other money received by the department from
26 the federal government, and all money recovered by the state under
27 Section 26.308 of this code.

1 SECTION 14. Subsections (a) and (d), Section 50.371, Water
2 Code, are amended to read as follows:

3 (a) The governing board of each district created under the
4 general law or by special act of the legislature has the overall
5 responsibility to adopt sound accounting policies, prepare reliable
6 financial statements, and at the expense of the district, engage an
7 independent auditor before the end of the fiscal year for an annual
8 audit of the district's fiscal accounts and records [~~shall have the~~
9 ~~district's fiscal accounts and records audited annually at the~~
10 ~~expense of the district~~].

11 (d) The governing board of each district shall assure that
12 the [The] audit required by this section shall be completed within
13 120 days after the close of the district's fiscal year, except for
14 districts audited by the state auditor; district audits by the
15 state auditor shall be completed within 12 months of the close of
16 the district's fiscal year.

17 SECTION 15. Subsections (a), (b), and (c), Section 50.374,
18 Water Code, are amended to read as follows:

19 (a) After the governing board of the district has approved
20 the audit, it shall submit a copy of the report including a
21 certificate indicating the governing board's approval of the
22 report. The certificate must be in the format prescribed by the
23 executive director. The governing board shall submit the report to
24 the executive director for filing within 135 days after the close
25 of the district's fiscal year unless the audit is performed by the
26 state auditor, in which case it will be filed in accordance with
27 Section 50.104 of this code.

1 (b) If the governing board of the district refuses to
2 approve the annual audit report, the governing board shall submit a
3 copy of the report, including a certificate that indicates the
4 governing board's disapproval of the report and reasons for that
5 disapproval. The certificate must be in the format prescribed by
6 the executive director. The governing board shall submit the
7 report to the executive director for filing within 135 days after
8 the close of the district's fiscal year, except as specified in
9 Subsection (a) of this section~~[, accompanied by a statement from~~
10 ~~the board explaining the reasons for its failure to approve the~~
11 ~~report]~~.

12 (c) Copies of the audit or the annual financial dormancy
13 affidavit or annual financial report described in Sections 50.377
14 and 50.378 of this code shall be filed annually in the office of
15 the district and with the city secretary or other designated city
16 official in whose extraterritorial jurisdiction the district is
17 located. If the district is not located within the
18 extraterritorial jurisdiction of a city, the audit, annual
19 financial dormancy affidavit, or annual financial report shall be
20 filed annually with the clerk of each ~~[the]~~ county within which the
21 district is located~~[, provided, however, this subsection shall not~~
22 ~~apply to any district which is located within all or parts of more~~
23 ~~than two counties, however, each such district shall file a copy of~~
24 ~~its annual audit, annual financial dormancy affidavit, or annual~~
25 ~~financial report with the county clerk of the county within which~~
26 ~~the greater part of the district resides]~~.

27 SECTION 16. Subsection (a), Section 50.377, Water Code, is

1 amended to read as follows:

2 (a) Those districts which can satisfy all [~~the~~] criteria
3 contained in this section are defined as financially dormant and
4 may elect to submit to the executive director for filing a
5 financial dormancy affidavit in lieu of compliance with Section
6 50.371 of this code:

7 (1) the district had \$500 or less [~~no~~] revenue from
8 operations, tax assessments, or any other sources during the
9 calendar year;

10 (2) the district had \$500 or less [~~no~~] expenditures of
11 funds during the calendar year; [~~and~~]

12 (3) the district had no bonds or any other liabilities
13 outstanding during the calendar year; and

14 (4) the district had no cash or investments in excess
15 of \$500 at any time during the calendar year.

16 SECTION 17. Subsection (a), Section 50.378, Water Code, is
17 amended to read as follows:

18 (a) A district may elect to file annual financial reports
19 with the executive director and the other governmental entities
20 prescribed by Subsection (c) of Section 50.374 of this code in lieu
21 of the district's compliance with Section 50.371 of this code
22 provided:

23 (1) the district had no bonds or other long-term (more
24 than one year) liabilities outstanding during the fiscal period;

25 (2) the district did not have gross revenues in excess
26 of \$20,000 [~~\$5,000~~] during the fiscal period; and

27 (3) the district's cash[~~,-receivables,~~] and temporary

1 investments were not in excess of \$50,000 at any time [~~\$20,000~~]
2 during the fiscal period.

3 SECTION 18. Subsection (e), Section 4, Solid Waste Disposal
4 Act (Article 4477-7, Vernon's Texas Civil Statutes), is amended to
5 read as follows:

6 (e) Except as provided in Subsection (f) of this section
7 with respect to certain industrial solid wastes, each state agency
8 has the power to require and issue permits authorizing and
9 governing the construction, operation, and maintenance of solid
10 waste facilities used for the storage, processing, or disposal of
11 solid waste. This power may be exercised by a state agency only
12 with respect to the solid waste over which it has jurisdiction
13 under this Act. If this power is exercised by a state agency, that
14 state agency shall prescribe the form of and reasonable
15 requirements for the permit application and the procedures to be
16 followed in processing the application, to the extent not otherwise
17 provided for in this subsection. The following additional
18 provisions apply if a state agency exercises the power authorized
19 in this subsection.[-]

20 (1) The state agency to whom the permit application is
21 submitted shall mail a copy of the application or a summary of its
22 contents to the Texas Air Control Board, to the other state agency,
23 to the mayor and health authorities of any city or town within
24 whose territorial limits or extraterritorial jurisdiction the solid
25 waste facility is located, and to the county judge and health
26 authorities of the county in which the facility is located. The
27 governmental entities to whom the information is mailed shall have

1 a reasonable time, as prescribed by the state agency to whom the
2 application was originally submitted, to present comments and
3 recommendations on the permit application before that state agency
4 acts on the application.

5 (2) A separate permit shall be issued for each solid waste
6 facility. The permit shall include the names and addresses of the
7 person or persons who own the land where the solid waste facility
8 is located and the person who is or will be the operator or person
9 in charge of the facility; a legal description of the land on which
10 the facility is located; and the terms and conditions on which the
11 permit is issued, including the duration of the permit. The state
12 agency in its discretion shall have the power to process a permit
13 application for purpose of determining land use compatibility
14 alone, and at another time, if the site location is acceptable,
15 consider technical matters related to the application. Where this
16 power is exercised, a public hearing may be held for each
17 determination in accordance with Paragraph (4) of this Subsection
18 (e).

19 (3) The state agency may amend, extend, or renew any permit
20 it issues in accordance with reasonable procedures prescribed by
21 the state agency. The procedures prescribed in Paragraph (1) of
22 this Subsection (e) for permit applications apply also to
23 applications to amend, extend, or renew a permit.

24 (4) Before a permit is issued, amended, extended, or
25 renewed, the state agency to which the application is submitted
26 shall provide an opportunity for a hearing to the applicant and
27 persons affected; the state agency may also hold such a hearing

1 upon its own motion. The state agency by rule shall establish
2 procedures for public notice and any public hearing authorized
3 under this paragraph. A hearing on a permit involving a solid
4 waste facility for hazardous industrial solid waste must include
5 one session held in the county in which the solid waste facility is
6 located. Hearings under this paragraph shall be conducted in
7 accordance with the hearing rules adopted by the state agency and
8 the applicable provisions of the Administrative Procedure and Texas
9 Register Act, as amended (Article 6252-13a, Vernon's Texas Civil
10 Statutes).

11 (5) Before a permit is issued, amended, extended, or
12 renewed, the state agency to which the application is submitted may
13 require the permittee to execute a bond or give other financial
14 assurance conditioned on the permittee's satisfactorily operating
15 and closing the solid waste facility. The state agency to which
16 the application is submitted shall require an assurance of
17 financial responsibility as may be necessary or desirable
18 consistent with the degree and duration of risks associated with
19 the processing, storage, or disposal of specified solid waste.
20 Financial requirements established by the state agency shall at a
21 minimum be consistent with the federal requirements established
22 under the federal Solid Waste Disposal Act, as amended by the
23 Resource Conservation and Recovery Act of 1976, 42 U.S.C., 6901 et
24 seq., as amended.

25 (6) If a permit is issued, amended, renewed, or extended by
26 a state agency in accordance with this Subsection (e), the owner or
27 operator of the solid waste facility does not need to obtain a

1 license for the same facility from a county, or from a political
2 subdivision exercising the authority granted in Section 6 of this
3 Act.

4 (7) A permit issued under this Act is issued only to the
5 person in whose name the application is made and is issued only for
6 the facility described in the permit. A permit may not be
7 transferred without prior written notice to and prior written
8 approval by the state agency which issued it.

9 (8) The state agency has the authority, for good cause, to
10 revoke or amend any permit it issues for reasons pertaining to
11 public health, air or water pollution, land use, or violation of
12 this Act or of any other applicable laws or rules controlling the
13 management of solid waste. The state agency using this authority
14 shall notify the governmental entities named in Paragraph (1) of
15 this Subsection (e) and provide an opportunity for a hearing to the
16 permittee and persons affected. The state agency may hold such a
17 hearing upon its own motion. The state agency by rule shall
18 establish procedures for public notice and any public hearing
19 authorized under this paragraph. Hearings under this paragraph
20 shall be conducted in accordance with the hearing rules adopted by
21 the state agency and the applicable provisions of the
22 Administrative Procedure and Texas Register Act, as amended
23 (Article 6252-13a, Vernon's Texas Civil Statutes).

24 (9) Manufacturing and processing establishments, commonly
25 known as rendering plants, which process for any purpose waste
26 materials originating from animals, poultry, and fish (all
27 hereinafter referred to as "animals") and materials of vegetable

1 origin, including without limitation animal parts and scraps,
2 offal, paunch manure, and waste cooking grease of animal and
3 vegetable origin are subject to regulation under the industrial
4 solid waste provisions of this Act and may also be regulated under
5 Chapter 26, Water Code. When a rendering establishment is owned by
6 a person who operates the rendering establishment as an integral
7 part of an establishment engaged in manufacturing or processing for
8 animal or human consumption food derived wholly or in part from
9 dead, slaughtered, or processed animals, poultry, or fish, the
10 combined business may operate under authority of a single permit
11 issued pursuant to Chapter 26, Water Code. The provisions of this
12 subsection do not apply to those rendering plants in operation and
13 production on or before August 27, 1973.

14 (10) Each state agency may issue an emergency order, either
15 mandatory or prohibitory in nature, regarding any activity of solid
16 waste management within its jurisdiction, whether such activity is
17 covered by a permit or not, if the state agency determines that the
18 activity is creating or will cause extensive or severe property
19 damage or economic loss to others or is posing an immediate and
20 serious threat to human life or health and that other procedures
21 available to the state agency to remedy or prevent the occurrence
22 of the situation will result in unreasonable delay. The order may
23 be issued without notice and hearing, or with such notice and
24 hearing as the state agency deems practicable under the
25 circumstances.

26 (i) If an emergency order is issued under this authority
27 without a hearing, the issuing agency shall fix a time and place

1 for a hearing to be held in accordance with the departmental rules
2 by the state agency, so as to affirm, modify, or set aside the
3 emergency order.

4 (ii) The requirements of Paragraph (4) of this subsection
5 relating to public notice do not apply to such a hearing, but such
6 general notice of the hearing shall be given in accordance with the
7 departmental rules of the state agency.

8 SECTION 19. Subsection (a), Section 5, Solid Waste Disposal
9 Act (Article 4477-7, Vernon's Texas Civil Statutes), is amended to
10 read as follows:

11 (a) Every county has the solid waste management powers which
12 are enumerated in this Section 5. However, the exercise of the
13 licensing authority and other powers granted to counties by this
14 Act does not preclude the department or the department of water
15 resources from exercising any of the powers vested in the
16 department or the department of water resources under other
17 provisions of this Act, including specifically the provisions
18 authorizing the department and the department of water resources to
19 issue permits for the construction, operation, and maintenance of
20 facilities for the processing, storage, or disposal of solid waste.
21 The powers specified in Subsections (d) and (e) of this section and
22 Section 18 of the County Solid Waste Control Act (Article 4477-8,
23 Vernon's Texas Civil Statutes) may not be exercised by a county
24 with respect to the industrial solid waste disposal practices and
25 areas to which Subsection (f) of Section 4 of this Act applies.
26 The department or the department of water resources, by specific
27 action or directive, may supersede any authority or power granted

1 to or exercised by a county under this Act, but only with respect
2 to those matters which are, under this Act, within the jurisdiction
3 of the state agency acting.

4 SECTION 20. Subdivisions (1) and (6), Subsection (a),
5 Section 8, Solid Waste Disposal Act (Article 4477-7, Vernon's Texas
6 Civil Statutes), are amended to read as follows:

7 (1) No person may cause, suffer, allow, or permit the
8 collection, storage, handling, transportation, processing, or
9 disposal of solid waste, or the use or operation of a solid waste
10 facility for the storage, processing, or disposal of solid waste,
11 in violation of this Act or of the rules, permits, licenses or
12 other orders of the department or the department of water
13 resources, or a county or a political subdivision exercising the
14 authority granted in Section 6 of this Act within whose
15 jurisdiction the violation occurs. For purposes of this section,
16 unauthorized disposal of solid waste is not limited to a single act
17 or occurrence. Each day that solid waste remains at an
18 unauthorized disposal site constitutes a separate violation.

19 (6) A suit for injunctive relief or for recovery of a civil
20 penalty, or for both injunctive relief and penalty, may be brought
21 either in the county where the defendant resides or in the county
22 where the violation or threat of violation occurs. In any suit
23 brought to enjoin a violation or threat of violation of this Act or
24 of any rule, permit, license or other order of the department of
25 water resources, the department, a county, or a political
26 subdivision exercising the authority granted in Section 6 of this
27 Act, the court may grant the governmental entity bringing the suit,

1 without bond or other undertaking, any prohibitory or mandatory
2 injunction the facts may warrant, including temporary restraining
3 orders [~~after--notice--and--hearing~~], temporary injunctions, and
4 permanent injunctions.

5 SECTION 21. Chapter 5, Water Code, is amended by adding
6 Section 5.358 to read as follows:

7 Sec. 5.358. LIABILITY OF DEPARTMENT. The department,
8 including the board, commission, and executive director, and its
9 employees and agents are not liable for any damages that may occur,
10 in whole or in part, as a result of acts done or omitted, any
11 decision made, or policy made or followed in a good faith effort to
12 carry out this code and other laws of this state.

13 SECTION 22. Chapter 11, Water Code, is amended by adding
14 Section 11.1221 to read as follows:

15 Sec. 11.1221. SECONDARY USE AUTHORIZATION REQUIRED. Any
16 reuse of state water for purposes other than those authorized by
17 the water right may only be made if authorized by the commission
18 through the granting of a water right or amendment to a water
19 right.

20 SECTION 23. Section 26.028, Water Code, is amended by adding
21 Subsections (e) and (f) to read as follows:

22 (e) In the notice prescribed by Subsection (a) of this
23 section, the commission shall:

- 24 (1) state the name and address of the applicant;
25 (2) state the location of the applicant's facilities
26 or operations;
27 (3) identify the nature of the application;

1 (4) specify the time and location where the commission
2 will consider the application;

3 (5) give any additional information the commission
4 considers necessary.

5 (f) If, on the date specified in the notice prescribed by
6 Subsection (e) of this section, the commission determines that a
7 public hearing must be held, the matter shall be remanded for
8 hearing without the necessity of issuing further notice other than
9 advising all parties of the time and place where the hearing is to
10 convene.

11 SECTION 24. Section 26.212, Water Code (the text of which is
12 effective until delegation of NPDES Authority), is amended by
13 adding Subsection (c) to read as follows:

14 (c) A person may not knowingly make any false statement,
15 representation, or certification in any application, notice,
16 record, report, plan, or other document filed or required to be
17 maintained under this chapter, or under any rule, permit, or other
18 order of the department.

19 SECTION 25. Chapter 26, Water Code, is amended by adding
20 Section 26.308 to read as follows:

21 Sec. 26.308. LIABILITY AND STATE RECOVERY OF COSTS. (a) As
22 used in this section, "owner," "operator," "disposal," "transport,"
23 "national contingency plan," and "natural resources" have the
24 meanings provided by the environmental response law.

25 (b) Notwithstanding any other law, and subject only to the
26 defenses provided by Section 107(b) of the environmental response
27 law, any person listed in Subsection (c) of this section is jointly

1 and severally liable for:

2 (1) all costs of removal or remedial action incurred
3 by this state that are not inconsistent with the national
4 contingency plan; and

5 (2) damages for injury to, destruction of, or loss of
6 natural resources, including the reasonable costs of assessing that
7 injury, destruction, or loss resulting from the release.

8 (c) The persons who are jointly and severally liable under
9 Subsection (b) of this section are:

10 (1) an owner or operator of a disposal facility from
11 which there is a release or a threatened release that causes the
12 occurrence of response costs of hazardous substances;

13 (2) a person who at the time of disposal of a
14 hazardous substance owned or operated a disposal facility at which
15 those hazardous substances were disposed of and from which there is
16 a release, or a threatened release that causes the occurrence of
17 response costs of a hazardous substance;

18 (3) a person who, by contract, agreement, or
19 otherwise, arranged with a transporter for transport for disposal
20 or treatment of hazardous substances owned or possessed by that
21 person, by any other party or entity, at any disposal facility
22 owned or operated by another party or entity and containing those
23 hazardous substances, from which there is a release or a threatened
24 release that causes the occurrence of response costs of a hazardous
25 substance; and

26 (4) any person who accepts or accepted any hazardous
27 substances for transport to disposal or treatment facilities or

1 sites selected by that person from which there is a release or
2 threatened release that causes the occurrence of response costs of
3 a hazardous substance.

4 (d) The executive director may request that the attorney
5 general institute a suit in a district court in Travis County
6 against a person listed in Subsection (c) of this section to
7 recover the state's costs and damages under Subsection (b) of this
8 section.

9 SECTION 26. Section 26.122, Water Code (the text of which
10 was to take effect on delegation of NPDES permit authority), as
11 follows, is repealed:

12 [~~Sec. 26.122. --CIVIL-PENALTY. --(a)--A person who violates any~~
13 ~~provision of this chapter, other than Subsection (d) or Subsection~~
14 ~~(e) of Section 21.251, or who violates any rule, permit, or order~~
15 ~~of the department is subject to a civil penalty of not less than~~
16 ~~\$50 nor more than \$1,000 for each act of violation and for each day~~
17 ~~of violation to be recovered as provided in this subchapter.~~

18 [~~(b)--A person who violates Subsection (d) or Subsection (e)~~
19 ~~of Section 21.251 of this chapter is subject to a civil penalty of~~
20 ~~not more than \$10,000 for each act of violation and for each day of~~
21 ~~violation, to be recovered as provided in this subchapter,~~
22 ~~provided, however, that in suits instituted pursuant to this~~
23 ~~subsection, the civil penalty, if any, assessed against the person~~
24 ~~who committed or who is committing the violation shall be no more~~
25 ~~than \$1,000 for each act of violation and for each day of violation~~
26 ~~where the violation is of a limitation or condition included in a~~
27 ~~permit issued by the department prior to delegation by the~~

1 Administrator-of-the-United-States-Environmental-Protection--Agency
2 of-NPDES-permit-authority-under-Section-402 (b)-of-the-Federal-Water
3 Pollution--Control--Act,-or-of-any-limitation-or-condition-included
4 in-an-identified-state-supplement-to-an-NPDES-permit--issued--after
5 NPDES--permit--delegation-by-the-Administrator-of-the-United-States
6 Environmental-Protection-Agency-]

7 SECTION 27. Section 26.123, Water Code (the text of which
8 was to take effect on delegation of NPDES permit authority), as
9 follows, is repealed:

10 [See- 26- 123- --ENFORCEMENT-BY-DEPARTMENT- -- (a)---Whenever--it
11 appears---that--a--person--has--violated--or--is--violating--or--is
12 threatening-to-violate-any-provision-of-this--chapter,-other--than
13 Subsection-(d)-or-Subsection-(e)-of-Section-21-251,-or-has-violated
14 or-is-violating,-or-is-threatening-to-violate,-any-rule,-permit,-or
15 order--of--the--department,-then-the-executive-director-may-have-a
16 civil-suit-instituted-in-a-district-court-for-injunctive-relief--to
17 restrain--the--person--from--continuing--the-violation-or-threat-of
18 violation,-or-for-the-assessment-and-recovery-of-a-civil-penalty-of
19 not-less-than-\$50-nor-more-than-\$1,000-for-each--act--of--violation
20 and--for--each--day-of-violation,-or-for-both-injunctive-relief-and
21 civil-penalty-

22 [(b)---Whenever-it-appears-that-a-person-has--violated--or--is
23 violating,---or--is--threatening--to--violate,-Subchapter--(d)--or
24 Subchapter--(e)--of--Section--21-251--of--this--chapter,-then--the
25 executive--director--may-have-a-civil-suit-instituted-in-a-district
26 court-for-injunctive-relief-to-restrain-the-person-from--continuing
27 the--violation--or--threat--of-violation,-or-for-the-assessment-and

1 recovery-of-a-civil-penalty-of-not-more-than-\$10,000-for--each--act
2 of--violation-and-for-each-day-of-violation,-or-for-both-injunctive
3 relief--and--civil--penalty,--provided,--however,--that--in--suits
4 instituted--pursuant-to-this-subsection,-the-civil-penalty,-if-any,
5 assessed-against-the-person-who-committed-or-who-is-committing--the
6 violation--shall--be--no-more-than-\$1,000-for-each-act-of-violation
7 and-for--each--day--of--violation--where--the--violation--is--of--a
8 limitation--or--condition--included-in-a-permit-issued-by-the-board
9 prior-to-delegation-by--the--Administrator--of--the--United--States
10 Environmental--Protection--Agency--of--NPDES-permit-authority-under
11 Section-402(b)-of-the-Federal-Water-Pollution-Control--Act,--or--of
12 any--limitation--or--condition--included--in--an--identified--state
13 supplement-to-an-NPDES-permit-issued-after-NPDES-permit--delegation
14 by--the-Administrator-of-the-United-States-Environmental-Protection
15 Agency-

16 [(c)--On-application-for-injunctive-relief-and-a-finding-that
17 a-person-is-violating-or-threatening-to-violate--any--provision--of
18 this--chapter--or-any-rule,-permit,-or-order-of-the-department,-the
19 district-court-shall-grant-the--injunctive--relief--the--facts--may
20 warrant-

21 [(d)--At--the-request-of-the-executive-director,-the-attorney
22 general-shall-institute-and-conduct-a-suit-in-the-name-of-the-State
23 of-Texas-for-injunctive-relief-or-to-recover-the-civil--penalty--or
24 for--both-injunctive-relief-and-penalty-as-authorized-in-Subsection
25 (a)-or-(b)-of-this-section-]

26 SECTION 28. (a) This Act takes effect September 1, 1983,
27 and applies only to applications filed on or after that date.

1 Applications filed with the Texas Department of Water Resources
2 before September 1, 1983, are governed by the law that was in
3 effect at the time the application was filed, and that law is
4 continued in effect for that purpose.

5 (b) This Act applies only to a violation committed on or
6 after September 1, 1983. Violations committed before September 1,
7 1983, are subject to the laws that existed at the time the
8 violation occurred, and those laws are continued in effect for that
9 purpose. For the purpose of this Act, a violation occurs before
10 September 1, 1983, if any element of the violation occurs before
11 that date.

12 SECTION 29. The importance of this legislation and the
13 crowded condition of the calendars in both houses create an
14 emergency and an imperative public necessity that the
15 constitutional rule requiring bills to be read on three several
16 days in each house be suspended, and this rule is hereby suspended.

1983 APR 18 PM 12:51

HOUSE OF REPRESENTATIVES

HOUSE

COMMITTEE REPORT

1st Printing

By Craddick

H.B. No. 1585

Substitute the following for H.B. No. 1585:

By Craddick

C.S.H.B. No. 1585

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the jurisdiction, powers, and duties of and the
3 enforcement by the Texas Department of Water Resources; providing
4 criminal offenses; and providing penalties.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Sections 11.132, 11.173, 16.052, and 50.372,
7 Water Code, are amended to read as follows:

8 Sec. 11.132. NOTICE [~~OF--HEARING~~]. (a) Notice shall be
9 given to the persons who in the judgment of the commission may be
10 affected by an application, including those persons listed in
11 Subdivision (2), Subsection (d), of this section. The commission,
12 on the motion of a commissioner or on the request of the executive
13 director or any affected person, shall hold a public hearing on the
14 application. [~~The-commission-shall-give-notice-of-the--hearing--on~~
15 ~~the-application-as-prescribed-by-this-section.~~

16 [~~(b)--In-the-notice,-the-commission-shall:-~~

17 [~~(1)--state-the-name-and-address-of-the-applicant,~~

18 [~~(2)--state-the-date-the-application-was-filed,~~

19 [~~(3)--state--the--purpose--and--extent--of-the-proposed~~
20 ~~appropriation-of-water,~~

21 [~~(4)--identify-the-source-of-supply-and-the-place-where~~
22 ~~the-water-is-to-be-stored-or-taken-or-diverted-from-the--source--of~~
23 ~~supply,~~

24 [~~(5)--specify-the-time-and-place-of-the-hearing,-and~~

1 ~~[(6) -- give -- any -- additional -- information -- the -- commission~~
2 ~~considers necessary.]~~

3 **(b)** ~~[(e)]~~ If the proposed use is for irrigation, the
4 commission shall include in the notice a general description of the
5 location and area of the land to be irrigated.

6 **(c)** In the notice, the commission shall:

7 (1) state the name and address of the applicant;

8 (2) state the date the application was filed;

9 (3) state the purpose and extent of the proposed
10 appropriation of water;

11 (4) identify the source of supply and the place where
12 the water is to be stored or taken or diverted from the source of
13 supply;

14 (5) specify the time and location where the commission
15 will consider the application; and

16 (6) give any additional information the commission
17 considers necessary.

18 **(d)** The commission may act on the application without
19 holding a public hearing if all of the following conditions are
20 met:

21 (1) not less than 30 days before the date of action on
22 the application by the commission, the applicant has published the
23 commission's notice of the application at least once in a newspaper
24 regularly published or circulated within the section of the state
25 where the source of water is located;

26 (2) not less than 30 days before the date of action on
27 the application by the commission, the commission mails a copy of

1 the notice by first-class mail, postage prepaid, to:

2 (A) each claimant or appropriator of water from
3 the source of water supply, the record of whose claim or
4 appropriation has been filed in the department; and

5 (B) all navigation districts within the river
6 basin concerned; and

7 (3) within 30 days after the date of the newspaper
8 publication of the commission's notice, a public hearing has not
9 been requested in writing by a commissioner, the executive
10 director, or an affected person who objects to the application.

11 (e) The inadvertent failure of the commission to mail a
12 notice under Subdivision (2), Subsection (d) of this section to a
13 navigation district that is not a claimant or appropriator of water
14 may not prevent the commission's consideration of the application.

15 (f) If, on the date specified in the notice prescribed by
16 Subsection (c) of this section, the commission determines that a
17 public hearing must be held, the matter shall be remanded for
18 hearing without the necessity of issuing further notice other than
19 advising all parties of the time and place where the hearing is to
20 convene. [The-notice-shall--be--published--once--a--week--for--two
21 consecutive--weeks--before--the--date--stated-in-the-notice-for-the
22 hearing-in-some-newspaper--having--a--general--circulation--in--the
23 section-of-the-state-where-the-source-of-water-is-located-

24 [(e) --The--commission-shall-also-mail-a-copy-of-the-notice-by
25 first-class-mail, postage-prepaid, to each claimant or appropriator
26 of water from the source of water supply, the record of whose claim
27 or appropriation has been filed in the office of the commission-

1 The--notice--shall--also--be--mailed--by--first-class-mail--postage
2 prepaid--to--all--navigation--districts--within--the--watershed
3 concerned--The--inadvertent--failure--of--the--commission--to--mail--a
4 notice--to--a--navigation--district--which--is--not--a--claimant--or
5 appropriator--of--water--does--not--prevent--the--hearing--on--the
6 application-

7 [(f) --The-notice-shall-be-mailed-and-first-published-not-less
8 than-20-days-before-the-date-set-for-the-hearing-]

9 Sec. 11.173. CANCELLATION IN WHOLE. (a) If no part of the
10 water authorized to be appropriated under a permit, certified
11 filing, or certificate of adjudication has been put to beneficial
12 use at any time during the 10-year period immediately preceding the
13 cancellation proceedings authorized by this subchapter, then the
14 appropriation is presumed to have been wilfully abandoned, and the
15 permit, certified filing, or certificate of adjudication is subject
16 to cancellation in whole as provided by this subchapter.

17 (b) Cancellation proceedings for failure to utilize water
18 under a permit for which time limitations for commencement and
19 completion of construction have been set by the commission under
20 Section 11.145 of this code and for which construction has not
21 begun or been completed shall be brought under Section 11.146 of
22 this code, and not under this subchapter.

23 Sec. 16.052. INTERBASIN WATER TRANSFER. The executive
24 director shall not prepare or formulate a plan which contemplates
25 or results in the removal of state [surface] water from the river
26 basin of origin and its adjoining coastal basins if the water
27 supply involved will be required for reasonably foreseeable water

supply requirements within the river basin of origin and its
adjoining coastal basins during the next ensuing 50-year period,
except on a temporary, interim basis.

Sec. 50.372. FORM OF AUDIT. (a) All audits required by
Subsection (a), Section 50.371, of this code shall be performed
according to the generally accepted auditing standards of the
American Institute of Certified Public Accountants.

(b) The audit report shall include the audited financial
statements presented in conformity with the American Institute of
Certified Public Accountants' generally accepted accounting
principles and the independent auditor's opinion regarding those
financial statements.

(c) The executive director shall adopt an accounting and
auditing manual to be used by districts to comply with Subsection
(a), Section 50.371, of this code.

(d) If any part of the manual is inconsistent with the
American Institute of Certified Public Accountants' generally
accepted auditing standards or generally accepted accounting
principles, the American Institute of Certified Public Accountants'
standards and principles prevail. [~~The executive director shall~~
~~adopt an accounting and auditing manual, and except as otherwise~~
~~provided by this manual, the audit shall be performed according to~~
~~the generally accepted auditing standards adopted by the American~~
~~Institute of Certified Public Accountants, hereinafter referred to~~
~~as generally accepted auditing standards, and shall include the~~
~~auditor's representation that the financial statements have been~~
~~prepared in accordance with generally accepted accounting~~

1 ~~principles-as-adopted-by-the-American-Institute-of-Certified-Public~~
2 ~~Accountants,---hereinafter---referred---to---as---generally---accepted~~
3 ~~accounting-principles.]~~

4 SECTION 2. (a) Section 26.122, Water Code (the text of
5 which was to be effective until delegation of NPDES permit
6 authority), is amended to read as follows:

7 Sec. 26.122. CIVIL PENALTY. A person who violates any
8 provision of this chapter or any rule, permit, or order of the
9 department is subject to a civil penalty of not less than \$100
10 [~~\$50~~] nor more than \$10,000 [~~\$1,000~~] for each act of violation and
11 for each day of violation to be recovered as provided in this
12 subchapter.

13 (b) The delegation of NPDES permit authority does not affect
14 Section 26.122, Water Code, as amended by Subsection (a) of this
15 section.

16 SECTION 3. Section 11.085, Water Code, is amended to read as
17 follows:

18 Sec. 11.085. INTERWATERSHED AND INTERBASIN TRANSFERS. (a)
19 No person may take or divert any of the water of the ordinary flow,
20 underflow, or storm flow of any stream, watercourse, or watershed
21 in this state into any other natural stream, watercourse, or
22 watershed to the prejudice of any person or property situated
23 within the watershed from which the water is proposed to be taken
24 or diverted.

25 (b) No person may transfer state water beyond the river
26 basin of origin and its adjoining coastal basins [~~from--one~~
27 ~~watershed--to--another~~] without first applying for and receiving a

1 permit from the commission to do so. Before issuing such a
2 permit, the commission shall hold a hearing to determine the rights
3 that might be affected by the transfer. The commission shall give
4 notice and hold the hearing in the manner prescribed by its
5 procedural rules.

6 (c) A person who takes or diverts water in violation of this
7 section is guilty of a misdemeanor and upon conviction is
8 punishable by a fine of not less than \$100 nor more than \$500 or by
9 confinement in the county jail for not more than six months.

10 (d) A person commits a separate offense each day he
11 continues to take or divert water in violation of this section.

12 SECTION 4. Subsection (a), Section 11.134, Water Code, is
13 amended to read as follows:

14 (a) After consideration of the application is complete [~~the~~
15 ~~hearing~~], the commission shall make a written decision granting or
16 denying the application. The application may be granted or denied
17 in whole or in part, and, if granted, may be for a specified term
18 of years.

19 SECTION 5. Subsections (d) and (f), Section 11.143, Water
20 Code, are amended to read as follows:

21 (d) Except as otherwise specifically provided by this
22 subsection, before [~~Before~~] the commission may approve the
23 application and issue the permit, it shall give notice and hold a
24 hearing as prescribed by this section. The commission may act on
25 the application without holding a public hearing if all of the
26 following conditions are met:

27 (1) not less than 30 days before the date of action on

1 the application by the commission, the applicant has published the
2 commission's notice of the application at least once in a newspaper
3 regularly published or circulated within the section of the state
4 where the source of water is located;

5 (2) not less than 30 days before the date of action on
6 the application by the commission, the commission mails a copy of
7 the notice by first-class mail, postage prepaid, to each person
8 whose claim or appropriation has been filed with the department and
9 whose diversion point is downstream from that described in the
10 application; and

11 (3) within 30 days after the date of the newspaper
12 publication of the commission's notice, a public hearing is not
13 requested in writing by a commissioner, the executive director, or
14 an affected person who objects to the application.

15 (f) If on the date specified in the notice prescribed by
16 Subsection (d) of this section, the commission determines that a
17 public hearing must be held, the matter shall be remanded for
18 hearing without the necessity of issuing further notice other than
19 advising all parties of the time and place where the hearing is to
20 convene. [The--notice--shall--be--published--only--once,--at--least--20
21 days--before--the--date--stated--in--the--notice--for--the--hearing--on--the
22 application,--in--a--newspaper--having--general--circulation--in--the
23 county--where--the--dam--or--reservoir--is--located.---At--least--15--days
24 before--the--date--set--for--the--hearing,--the--commission--shall--transmit
25 a--copy--of--the--notice--by--first--class--mail--to--each--person--whose--claim
26 or--appropriation--has--been--filed--with--the--department--and--whose
27 diversion---point---is---downstream--from--that--described--in--the

1 ~~application.~~]

2 SECTION 6. Subsection (b), Section 12.113, Water Code, is
3 amended to read as follows:

4 (b) The department shall deposit all costs collected under
5 Subchapter G [F], Chapter 11 of this code in the State Treasury to
6 the credit of the water rights administration fund, from which the
7 department shall pay all expenses necessary to efficiently
8 administer and perform the duties described in Sections 11.325
9 through 11.335 of this code.

10 SECTION 7. Section 15.104, Water Code, is amended to read as
11 follows:

12 Sec. 15.104. CERTIFICATE OF EXECUTIVE DIRECTOR [~~COMMISSION~~]
13 OR APPROVAL BY EXECUTIVE DIRECTOR [~~COMMISSION~~]. (a) Except as
14 provided by Subsection (b) of this section, the board shall not
15 deliver funds pursuant to an application for financial assistance
16 from the loan fund until the executive director has furnished the
17 board written evidence [~~political--subdivision-has-furnished-the~~
18 ~~board-a-resolution-adopted-by-the-commission~~] certifying:

19 (1) that an applicant proposing surface-water
20 development has the necessary water right authorizing it to
21 appropriate and use the water that the project will provide; or

22 (2) that an applicant proposing underground water
23 development has the right to use water that the project will
24 provide.

25 (b) If an applicant includes a proposal for a waste water
26 treatment plant, [~~the-part-of-the-application-relating-to-the-waste~~
27 ~~water--treatment--plant--does--not--need--to--be--certified--by-the~~

1 ~~commission, but~~] the board may not deliver funds for the waste
2 water treatment plant until the political subdivision has obtained
3 written evidence of approval of the plans for the waste water
4 treatment plant from the executive director.

5 SECTION 8. Section 17.123, Water Code, is amended to read as
6 follows:

7 Sec. 17.123. CERTIFICATE OF EXECUTIVE DIRECTOR ~~[COMMISSION]~~
8 OR APPROVAL BY EXECUTIVE DIRECTOR ~~[COMMISSION]~~. (a) Except as
9 provided in Subsection (b) of this section, the board shall not
10 deliver funds pursuant to an application for financial assistance
11 until the executive director has furnished the board written
12 evidence ~~[political--subdivision--has--furnished---the---board---a~~
13 ~~resolution--adopted-by-the-commission]~~ certifying:

14 (1) that an applicant proposing surface-water
15 development has the necessary water right authorizing it to
16 appropriate and use the water which the project will provide; or

17 (2) that an applicant proposing underground water
18 development has the right to use water that the project will
19 provide.

20 (b) If an application includes a proposal for a waste water
21 treatment plant, ~~[the-part-of-the-application-relating-to-the-waste~~
22 ~~water-treatment--plant--does--not--need--to--be--certified--by--the~~
23 ~~commission, but]~~ the board may not deliver funds for the waste
24 water treatment plant until the political subdivision has obtained
25 written evidence of approval of the plans for the waste water
26 treatment plant from the executive director.

27 SECTION 9. Subsection (a), Section 26.022, Water Code, is

1 amended to read as follows:

2 (a) Except as otherwise provided in Sections 26.0191,
3 26.028, and 26.176 of this code, the provisions of this section
4 apply to all hearings conducted in compliance with this chapter.

5 SECTION 10. (a) Section 26.123, Water Code (the text of
6 which was to be effective until delegation of NPDES permit
7 authority), is amended to read as follows:

8 Sec. 26.123. ENFORCEMENT BY DEPARTMENT. (a) Whenever it
9 appears that a person has violated or is violating or is
10 threatening to violate any provision of this chapter or any rule,
11 permit, or order of the department, then the executive director may
12 have a civil suit instituted in a district court for injunctive
13 relief to restrain the person from continuing the violation or
14 threat of violation, or for the assessment and recovery of a civil
15 penalty of not less than \$100 [~~\$50~~] nor more than \$10,000 [~~\$1,000~~]
16 for each act of violation and for each day of violation, or for
17 both injunctive relief and civil penalty.

18 (b) On application for injunctive relief and a finding that
19 a person is violating or threatening to violate any provision of
20 this chapter or any rule, permit, or order of the department, the
21 district court shall grant the injunctive relief the facts may
22 warrant.

23 (c) At the request of the executive director, the attorney
24 general shall institute and conduct a suit in the name of the State
25 of Texas for injunctive relief or to recover the civil penalty or
26 for both injunctive relief and penalty as authorized in Subsection
27 (a) of this section.

1 (b) The delegation of NPDES permit authority does not affect
2 Section 26.123, Water Code, as amended by Subsection (a) of this
3 section.

4 SECTION 11. Subdivision (3), Section 26.211, Water Code, is
5 amended to read as follows:

6 (3) "Person" means an individual, ~~[or]~~ private
7 corporation, organization, government or governmental subdivision
8 or agency, business trust, partnership, association, or any other
9 legal entity.

10 SECTION 12. Subsection (c), Section 26.303, Water Code, is
11 amended to read as follows:

12 (c) If the department enters into a contract or cooperative
13 agreement under Section 104(c)(3) of the environmental response
14 law, the board may ~~[shall]~~ include in the contract or agreement
15 terms and conditions:

16 (1) to assure future maintenance of the removal and
17 remedial actions provided for the expected life of those actions as
18 determined by the federal government;

19 (2) to assure the availability of a hazardous waste
20 disposal facility acceptable to the federal government that
21 complies with Subtitle C of the federal Solid Waste Disposal Act
22 (42 U.S.C. 6921 et seq.) for any necessary off-site storage,
23 destruction, treatment, or secure disposition of the hazardous
24 substances, pollutants, or contaminants; and

25 (3) to assure payment by the state of:

26 (A) 10 percent of the costs of the removal and
27 remedial actions, including future maintenance; or

1 (B) at least 50 percent or more of the costs as
2 determined appropriate by the federal government, taking into
3 account the degree of responsibility of the state for any amount
4 spent in response to a release at a disposal facility that was
5 owned by the state at the time of disposal of hazardous substances
6 at the disposal facility.

7 SECTION 13. Subsection (b), Section 26.304, Water Code, is
8 amended to read as follows:

9 (b) The fund shall include money appropriated to it by the
10 legislature, [and] any ~~either~~ money received for this purpose by
11 the department from the federal government, and all money recovered
12 by the state under Section 26.308 of this code.

13 SECTION 14. Subsections (a) and (d), Section 50.371, Water
14 Code, are amended to read as follows:

15 (a) The governing board of each district created under the
16 general law or by special act of the legislature has the overall
17 responsibility to adopt sound accounting policies, prepare reliable
18 financial statements, and at the expense of the district, engage an
19 independent auditor before the end of the fiscal year for an annual
20 audit of the district's fiscal accounts and records ~~[shall have the~~
21 ~~district's--fiscal--accounts--and--records--audited--annually--at--the~~
22 ~~expense--of--the--district]~~.

23 (d) The governing board of each district shall assure that
24 the ~~[The]~~ audit required by this section shall be completed within
25 120 days after the close of the district's fiscal year, except for
26 districts audited by the state auditor; district audits by the
27 state auditor shall be completed within 12 months of the close of

1 the district's fiscal year.

2 SECTION 15. Subsections (a), (b), and (c), Section 50.374,
3 Water Code, are amended to read as follows:

4 (a) After the governing board of the district has approved
5 the audit, it shall submit a copy of the report including a
6 certificate indicating the governing board's approval of the
7 report. The certificate must be in the format prescribed by the
8 executive director. The governing board shall submit the report to
9 the executive director for filing within 135 days after the close
10 of the district's fiscal year unless the audit is performed by the
11 state auditor, in which case it will be filed in accordance with
12 Section 50.104 of this code.

13 (b) If the governing board of the district refuses to
14 approve the annual audit report, the governing board shall submit a
15 copy of the report, including a certificate that indicates the
16 governing board's disapproval of the report and reasons for that
17 disapproval. The certificate must be in the format prescribed by
18 the executive director. The governing board shall submit the
19 report to the executive director for filing within 135 days after
20 the close of the district's fiscal year, except as specified in
21 Subsection (a) of this section[~~7-accompanied-by--a--statement--from~~
22 ~~the--board--explaining--the--reasons-for-its-failure-to-approve-the~~
23 ~~report~~].

24 (c) Copies of the audit or the annual financial dormancy
25 affidavit or annual financial report described in Sections 50.377
26 and 50.378 of this code shall be filed annually in the office of
27 the district and with the city secretary or other designated city

1 official in whose extraterritorial jurisdiction the district is
 2 located. If the district is not located within the
 3 extraterritorial jurisdiction of a city, the audit, annual
 4 financial dormancy affidavit, or annual financial report shall be
 5 filed annually with the clerk of each [the] county within which the
 6 district is located[~~;-provided;-however;-this-subsection-shall--not~~
 7 ~~apply--to-any-district-which-is-located-within-all-or-parts-of-more~~
 8 ~~than-two-counties;-however;-each-such-district-shall-file-a-copy-of~~
 9 ~~its-annual-audit;-annual-financial-dormancy--affidavit;--or--annual~~
 10 ~~financial--report--with-the-county-clerk-of-the-county-within-which~~
 11 ~~the-greater-part-of-the-district-resides]~~.

12 SECTION 16. Subsection (a), Section 50.377, Water Code, is
 13 amended to read as follows:

14 (a) Those districts which can satisfy all [the] criteria
 15 contained in this section are defined as financially dormant and
 16 may elect to submit to the executive director for filing a
 17 financial dormancy affidavit in lieu of compliance with Section
 18 50.371 of this code:

19 (1) the district had \$500 or less [no] revenue from
 20 operations, tax assessments, or any other sources during the
 21 calendar year;

22 (2) the district had \$500 or less [no] expenditures of
 23 funds during the calendar year; [and]

24 (3) the district had no bonds or any other liabilities
 25 outstanding during the calendar year; and

26 (4) the district had no cash or investments in excess
 27 of \$500 at any time during the calendar year.

1 SECTION 17. Subsection (a), Section 50.378, Water Code, is
2 amended to read as follows:

3 (a) A district may elect to file annual financial reports
4 with the executive director and the other governmental entities
5 prescribed by Subsection (c) of Section 50.374 of this code in lieu
6 of the district's compliance with Section 50.371 of this code
7 provided:

8 (1) the district had no bonds or other long-term (more
9 than one year) liabilities outstanding during the fiscal period;

10 (2) the district did not have gross revenues in excess
11 of \$20,000 [~~\$5,000~~] during the fiscal period; and

12 (3) the district's cash[~~receivables~~] and temporary
13 investments were not in excess of \$50,000 at any time [~~\$20,000~~]
14 during the fiscal period.

15 SECTION 18. Subsection (e), Section 4, Solid Waste Disposal
16 Act (Article 4477-7, Vernon's Texas Civil Statutes), is amended to
17 read as follows:

18 (e) Except as provided in Subsection (f) of this section
19 with respect to certain industrial solid wastes, each state agency
20 has the power to require and issue permits authorizing and
21 governing the construction, operation, and maintenance of solid
22 waste facilities used for the storage, processing, or disposal of
23 solid waste. This power may be exercised by a state agency only
24 with respect to the solid waste over which it has jurisdiction
25 under this Act. If this power is exercised by a state agency, that
26 state agency shall prescribe the form of and reasonable
27 requirements for the permit application and the procedures to be

1 followed in processing the application, to the extent not otherwise
2 provided for in this subsection. The following additional
3 provisions apply if a state agency exercises the power authorized
4 in this subsection. []

5 (1) The state agency to whom the permit application is
6 submitted shall mail a copy of the application or a summary of its
7 contents to the Texas Air Control Board, to the other state agency,
8 to the mayor and health authorities of any city or town within
9 whose territorial limits or extraterritorial jurisdiction the solid
10 waste facility is located, and to the county judge and health
11 authorities of the county in which the facility is located. The
12 governmental entities to whom the information is mailed shall have
13 a reasonable time, as prescribed by the state agency to whom the
14 application was originally submitted, to present comments and
15 recommendations on the permit application before that state agency
16 acts on the application.

17 (2) A separate permit shall be issued for each solid waste
18 facility. The permit shall include the names and addresses of the
19 person or persons who own the land where the solid waste facility
20 is located and the person who is or will be the operator or person
21 in charge of the facility; a legal description of the land on which
22 the facility is located; and the terms and conditions on which the
23 permit is issued, including the duration of the permit. The state
24 agency in its discretion shall have the power to process a permit
25 application for purpose of determining land use compatibility
26 alone, and at another time, if the site location is acceptable,
27 consider technical matters related to the application. Where this

1 power is exercised, a public hearing may be held for each
2 determination in accordance with Paragraph (4) of this Subsection
3 (e).

4 (3) The state agency may amend, extend, or renew any permit
5 it issues in accordance with reasonable procedures prescribed by
6 the state agency. The procedures prescribed in Paragraph (1) of
7 this Subsection (e) for permit applications apply also to
8 applications to amend, extend, or renew a permit.

9 (4) Before a permit is issued, amended, extended, or
10 renewed, the state agency to which the application is submitted
11 shall provide an opportunity for a hearing to the applicant and
12 persons affected; the state agency may also hold such a hearing
13 upon its own motion. The state agency by rule shall establish
14 procedures for public notice and any public hearing authorized
15 under this paragraph. A hearing on a permit involving a solid
16 waste facility for hazardous industrial solid waste must include
17 one session held in the county in which the solid waste facility is
18 located. Hearings under this paragraph shall be conducted in
19 accordance with the hearing rules adopted by the state agency and
20 the applicable provisions of the Administrative Procedure and Texas
21 Register Act, as amended (Article 6252-13a, Vernon's Texas Civil
22 Statutes).

23 (5) Before a permit is issued, amended, extended, or
24 renewed, the state agency to which the application is submitted may
25 require the permittee to execute a bond or give other financial
26 assurance conditioned on the permittee's satisfactorily operating
27 and closing the solid waste facility. The state agency to which

1 the application is submitted shall require an assurance of
2 financial responsibility as may be necessary or desirable
3 consistent with the degree and duration of risks associated with
4 the processing, storage, or disposal of specified solid waste.
5 Financial requirements established by the state agency shall at a
6 minimum be consistent with the federal requirements established
7 under the federal Solid Waste Disposal Act, as amended by the
8 Resource Conservation and Recovery Act of 1976, 42 U.S.C., 6901 et
9 seq., as amended.

10 (6) If a permit is issued, amended, renewed, or extended by
11 a state agency in accordance with this Subsection (e), the owner or
12 operator of the solid waste facility does not need to obtain a
13 license for the same facility from a county, or from a political
14 subdivision exercising the authority granted in Section 6 of this
15 Act.

16 (7) A permit issued under this Act is issued only to the
17 person in whose name the application is made and is issued only for
18 the facility described in the permit. A permit may not be
19 transferred without prior written notice to and prior written
20 approval by the state agency which issued it.

21 (8) The state agency has the authority, for good cause, to
22 revoke or amend any permit it issues for reasons pertaining to
23 public health, air or water pollution, land use, or violation of
24 this Act or of any other applicable laws or rules controlling the
25 management of solid waste. The state agency using this authority
26 shall notify the governmental entities named in Paragraph (1) of
27 this Subsection (e) and provide an opportunity for a hearing to the

1 permittee and persons affected. The state agency may hold such a
2 hearing upon its own motion. The state agency by rule shall
3 establish procedures for public notice and any public hearing
4 authorized under this paragraph. Hearings under this paragraph
5 shall be conducted in accordance with the hearing rules adopted by
6 the state agency and the applicable provisions of the
7 Administrative Procedure and Texas Register Act, as amended
8 (Article 6252-13a, Vernon's Texas Civil Statutes).

9 (9) Manufacturing and processing establishments, commonly
10 known as rendering plants, which process for any purpose waste
11 materials originating from animals, poultry, and fish (all
12 hereinafter referred to as "animals") and materials of vegetable
13 origin, including without limitation animal parts and scraps,
14 offal, paunch manure, and waste cooking grease of animal and
15 vegetable origin are subject to regulation under the industrial
16 solid waste provisions of this Act and may also be regulated under
17 Chapter 26, Water Code. When a rendering establishment is owned by
18 a person who operates the rendering establishment as an integral
19 part of an establishment engaged in manufacturing or processing for
20 animal or human consumption food derived wholly or in part from
21 dead, slaughtered, or processed animals, poultry, or fish, the
22 combined business may operate under authority of a single permit
23 issued pursuant to Chapter 26, Water Code. The provisions of this
24 subsection do not apply to those rendering plants in operation and
25 production on or before August 27, 1973.

26 (10) Each state agency may issue an emergency order, either
27 mandatory or prohibitory in nature, regarding any activity of solid

1 waste management within its jurisdiction, whether such activity is
2 covered by a permit or not, if the state agency determines that the
3 activity is creating or will cause extensive or severe property
4 damage or economic loss to others or is posing an immediate and
5 serious threat to human life or health and that other procedures
6 available to the state agency to remedy or prevent the occurrence
7 of the situation will result in unreasonable delay. The order may
8 be issued without notice and hearing, or with such notice and
9 hearing as the state agency deems practicable under the
10 circumstances.

11 (i) If an emergency order is issued under this authority
12 without a hearing, the issuing agency shall fix a time and place
13 for a hearing to be held in accordance with the departmental rules
14 by the state agency, so as to affirm, modify, or set aside the
15 emergency order.

16 (ii) The requirements of Paragraph (4) of this subsection
17 relating to public notice do not apply to such a hearing, but such
18 general notice of the hearing shall be given in accordance with the
19 departmental rules of the state agency.

20 SECTION 19. Subsection (a), Section 5, Solid Waste Disposal
21 Act (Article 4477-7, Vernon's Texas Civil Statutes), is amended to
22 read as follows:

23 (a) Every county has the solid waste management powers which
24 are enumerated in this Section 5. However, the exercise of the
25 licensing authority and other powers granted to counties by this
26 Act does not preclude the department or the department of water
27 resources from exercising any of the powers vested in the

1 department or the department of water resources under other
2 provisions of this Act, including specifically the provisions
3 authorizing the department and the department of water resources to
4 issue permits for the construction, operation, and maintenance of
5 facilities for the processing, storage, or disposal of solid waste.
6 The powers specified in Subsections (d) and (e) of this section and
7 Section 18 of the County Solid Waste Control Act (Article 4477-8,
8 Vernon's Texas Civil Statutes) may not be exercised by a county
9 with respect to the industrial solid waste disposal practices and
10 areas to which Subsection (f) of Section 4 of this Act applies.
11 The department or the department of water resources, by specific
12 action or directive, may supersede any authority or power granted
13 to or exercised by a county under this Act, but only with respect
14 to those matters which are, under this Act, within the jurisdiction
15 of the state agency acting.

16 SECTION 20. Subdivision (6), Subsection (a), Section 8,
17 Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil
18 Statutes), is amended to read as follows:

19 (6) A suit for injunctive relief or for recovery of a civil
20 penalty, or for both injunctive relief and penalty, may be brought
21 either in the county where the defendant resides or in the county
22 where the violation or threat of violation occurs. In any suit
23 brought to enjoin a violation or threat of violation of this Act or
24 of any rule, permit, license or other order of the department of
25 water resources, the department, a county, or a political
26 subdivision exercising the authority granted in Section 6 of this
27 Act, the court may grant the governmental entity bringing the suit,

1 without bond or other undertaking, any prohibitory or mandatory
2 injunction the facts may warrant, including temporary restraining
3 orders [~~after--notice--and--hearing~~], temporary injunctions, and
4 permanent injunctions.

5 SECTION 21. Chapter 5, Water Code, is amended by adding
6 Section 5.358 to read as follows:

7 Sec. 5.358. LIABILITY OF DEPARTMENT. The department,
8 including the board, commission, and executive director, and its
9 employees and agents are not liable for any damages that may occur,
10 in whole or in part, as a result of acts done or omitted, any
11 decision made, or policy made or followed in a good faith effort to
12 carry out this code and other laws of this state.

13 SECTION 22. Chapter 11, Water Code, is amended by adding
14 Section 11.1221 to read as follows:

15 Sec. 11.1221. SECONDARY USE AUTHORIZATION REQUIRED. Any
16 reuse of state water for purposes other than those authorized by
17 the water right may be made only if authorized by the commission
18 through the granting of a water right or amendment to a water
19 right.

20 SECTION 23. Section 26.028, Water Code, is amended by adding
21 Subsections (e) and (f) to read as follows:

22 (e) In the notice prescribed by Subsection (a) of this
23 section, the commission shall:

- 24 (1) state the name and address of the applicant;
25 (2) state the location of the applicant's facilities
26 or operations;
27 (3) identify the nature of the application;

1 (4) specify the time and location where the commission
2 will consider the application; and

3 (5) give any additional information the commission
4 considers necessary.

5 (f) If, on the date specified in the notice prescribed by
6 Subsection (e) of this section, the commission determines that a
7 public hearing must be held, the matter shall be remanded for
8 hearing without the necessity of issuing further notice other than
9 advising all parties of the time and place where the hearing is to
10 convene.

11 SECTION 24. Section 26.212, Water Code (the text of which is
12 effective until delegation of NPDES Authority), is amended by
13 adding Subsection (c) to read as follows:

14 (c) No person may knowingly make any false statement,
15 representation, or certification in any application, notice,
16 record, report, plan, or other document filed or required to be
17 maintained under this chapter, or under any rule, permit, or other
18 order of the department.

19 SECTION 25. Chapter 26, Water Code, is amended by adding
20 Section 26.308 to read as follows:

21 Sec. 26.308. LIABILITY AND STATE RECOVERY OF COSTS. (a) As
22 used in this section, "owner," "operator," "disposal," "transport,"
23 "national contingency plan," and "natural resources" have the
24 meanings provided by the environmental response law.

25 (b) Notwithstanding any other law, and subject to the
26 defenses provided by Section 107(b) of the environmental response
27 law, any person listed in Subsection (c) of this section shall be

1 liable for:

2 (1) all costs of removal or remedial action incurred
3 by this state that are not inconsistent with the national
4 contingency plan; and

5 (2) damages for injury to, destruction of, or loss of
6 natural resources, including the reasonable costs of assessing that
7 injury, destruction, or loss resulting from the release.

8 (c) The persons who are liable under Subsection (b) of this
9 section are:

10 (1) an owner or operator of a disposal facility from
11 which there is a release or a threatened release of a hazardous
12 substance that causes the occurrence of response costs;

13 (2) a person who at the time of disposal of a
14 hazardous substance owned or operated a disposal facility at which
15 those hazardous substances were disposed of and from which there is
16 a release, or a threatened release of a hazardous substance that
17 causes the occurrence of response costs;

18 (3) a person who, by contract, agreement, or
19 otherwise, arranged with a transporter for transport for disposal
20 or treatment of hazardous substances owned or possessed by that
21 person, or by any other party or entity, at any disposal facility
22 owned or operated by another party or entity and containing such
23 hazardous substances, from which there is a release or a threatened
24 release of a hazardous substance that causes the occurrence of
25 response costs; and

26 (4) any person who accepts or accepted any hazardous
27 substances for transport to disposal or treatment facilities or

1 sites selected by that person from which there is a release or
 2 threatened release of a hazardous substance that causes the
 3 occurrence of response costs.

4 (d) The executive director may request that the attorney
 5 general institute a suit in a district court in Travis County
 6 against a person listed in Subsection (c) of this section to
 7 recover the state's costs and damages under Subsection (b) of this
 8 section.

9 (e) At the request of the executive director, the attorney
 10 general shall institute and conduct a suit in the name of the State
 11 of Texas to recover the state's costs and damages under Subsection
 12 (b) of this section.

13 SECTION 26. Section 26.122, Water Code (the text of which
 14 was to take effect on delegation of NPDES permit authority), as
 15 follows, is repealed:

16 ~~[Sec. 26.122. --CIVIL-PENALTY. -- (a)--A-person-who-violates-any~~
 17 ~~provision-of-this-chapter, other-than-Subsection (d)-or--Subsection~~
 18 ~~(e)--of--Section-21.251, or-who-violates-any-rule, permit, or-order~~
 19 ~~of-the-department-is-subject-to-a-civil-penalty-of--not--less--than~~
 20 ~~\$50-not-more-than-\$1,000-for-each-act-of-violation-and-for-each-day~~
 21 ~~of-violation-to-be-recovered-as-provided-in-this-subchapter.~~

22 ~~[(b)--A--person-who-violates-Subsection (d)-or-Subsection (e)~~
 23 ~~of-Section-21.251-of-this-chapter-is-subject-to-a-civil-penalty--of~~
 24 ~~not-more-than-\$10,000-for-each-act-of-violation-and-for-each-day-of~~
 25 ~~violation,---to--be--recovered--as--provided--in--this--subchapter,~~
 26 ~~provided, however,--that--in--suits--instituted--pursuant--to--this~~
 27 ~~subsection,--the-civil-penalty, if-any, assessed-against-the-person~~

who-committed-or-who-is-committing-the-violation-shall-be--no--more
 than-\$1,000-for-each-act-of-violation-and-for-each-day-of-violation
 where--the--violation-is-of-a-limitation-or-condition-included-in-a
 permit--issued--by--the--department--prior--to--delegation--by--the
 Administrator--of-the-United-States-Environmental-Protection-Agency
 of-NPDES-permit-authority-under-Section-402 (b)-of-the-Federal-Water
 Pollution-Control-Act,-or-of-any-limitation-or--condition--included
 in--an--identified-state-supplement-to-an-NPDES-permit-issued-after
 NPDES-permit-delegation-by-the-Administrator-of-the--United--States
 Environmental-Protection-Agency.]

SECTION 27. Section 26.123, Water Code (the text of which
 was to take effect on delegation of NPDES permit authority), as
 follows, is repealed:

[Sec. 26.123. --ENFORCEMENT--BY--DEPARTMENT-- (a)--Whenever-it
 appears--that--a--person--has--violated--or--is--violating--or--is
 threatening--to--violate--any-provision-of-this-chapter,-other-than
 Subsection-(d)-or-Subsection-(e)-of-Section-21.251,-or-has-violated
 or-is-violating,-or-is-threatening-to-violate,-any-rule,-permit,-or
 order-of-the-department,-then-the-executive--director--may--have--a
 civil--suit-instituted-in-a-district-court-for-injunctive-relief-to
 restrain-the-person-from-continuing--the--violation--or--threat--of
 violation,-or-for-the-assessment-and-recovery-of-a-civil-penalty-of
 not--less--than--\$50-ner-more-than-\$1,000-for-each-act-of-violation
 and-for-each-day-of-violation,-or-for-both--injunctive--relief--and
 civil-penalty.

[(b)--Whenever--it--appears--that-a-person-has-violated-or-is
 violating,-or-is-threatening--to--violate,-Subchapter--(d)---or

Subchapter--(e)--of--Section--21.251--of--this--chapter,--then--the executive-director-may-have-a-civil-suit-instituted-in--a--district court--for-injunctive-relief-to-restrain-the-person-from-continuing the-violation-or-threat-of-violation,--or--for--the--assessment--and recovery--of--a-civil-penalty-of-not-more-than-\$10,000-for-each-act of-violation-and-for-each-day-of-violation,--or-for-both--injunctive relief--and--civil--penalty,--provided,--however,--that--in--suits instituted-pursuant-to-this-subsection,--the-civil-penalty,--if--any, assessed--against-the-person-who-committed-or-who-is-committing-the violation-shall-be-no-more-than-\$1,000-for-each--act--of--violation and--for--each--day--of--violation--where--the--violation--is--of-a limitation-or-condition-included-in-a-permit-issued--by--the--board prior--to--delegation--by--the--Administrator--of-the-United-States Environmental-Protection-Agency-of--NPDES--permit--authority--under Section--402(b)--of--the-Federal-Water-Pollution-Control-Act,--or-of any--limitation--or--condition--included--in--an--identified--state supplement--to-an-NPDES-permit-issued-after-NPDES-permit-delegation by-the-Administrator-of-the-United-States-Environmental--Protection Agency-

[(e)--On-application-for-injunctive-relief-and-a-finding-that a--person--is--violating-or-threatening-to-violate-any-provision-of this-chapter-or-any-rule,--permit,--or-order-of-the--department,--the district--court--shall--grant--the--injunctive-relief-the-facts-may warrant-

[(d)--At-the-request-of-the-executive-director,--the--attorney general-shall-institute-and-conduct-a-suit-in-the-name-of-the-State of--Texas--for-injunctive-relief-or-to-recover-the-civil-penalty-or

1 ~~for both injunctive relief and penalty as authorized in--Subsection~~
2 ~~(a) or (b) of this section.]~~

3 SECTION 28. (a) This Act takes effect September 1, 1983,
4 and applies only to applications filed on or after that date.
5 Applications filed with the Texas Department of Water Resources
6 before September 1, 1983, are governed by the law that was in
7 effect at the time the application was filed, and that law is
8 continued in effect for that purpose.

9 (b) This Act applies only to a violation committed on or
10 after September 1, 1983. Violations committed before September 1,
11 1983, are subject to the laws that existed at the time the
12 violation occurred, and those laws are continued in effect for that
13 purpose. For the purpose of this Act, a violation occurs before
14 September 1, 1983, if any element of the violation occurs before
15 that date.

16 SECTION 29. The importance of this legislation and the
17 crowded condition of the calendars in both houses create an
18 emergency and an imperative public necessity that the
19 constitutional rule requiring bills to be read on three several
20 days in each house be suspended, and this rule is hereby suspended.

COMMITTEE REPORT

The Honorable Gib Lewis
Speaker of the House of Representatives

April 12 1983
(date)

Sir:

We, your COMMITTEE ON NATURAL RESOURCES, to whom was referred H.B. 1585 have had the same under consideration and beg to report back with the recommendation that it (measure)

- () do pass, without amendment.
() do pass, with amendment(s).
(✓) do pass and be not printed; a Complete Committee Substitute is recommended in lieu of the original measure.

A fiscal note was requested. (✓)yes () no

An author's fiscal statement was requested. () yes (✓)no

An actuarial analysis was requested. () yes (✓)no

The Committee recommends that this measure be placed on the ~~(Local)~~ (Consent) Calendar.

This measure (✓) proposes new law. *and*
(✓) amends existing law.

House Sponsor of Senate Measure _____

The measure was reported from Committee by the following vote:

| | AYE | NAY | PNV | ABSENT |
|-------------------|-----|-----|-----|--------|
| Craddick, Ch. | ✓ | | | |
| Tow, V.C. | ✓ | | | |
| Geistweidt, C.B.O | | | | ✓ |
| Buchanan | ✓ | | | |
| Grisham | ✓ | | | |
| Jones | ✓ | | | |
| Kemp | ✓ | | | |
| Martinez, R. | | | | ✓ |
| Staniswalis | ✓ | | | |
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| | | | | |

Total
7 aye
0 nay
0 present, not voting
2 absent

Gib Lewis
CHAIRMAN
Reynolds
COMMITTEE COORDINATOR

1

BILL ANALYSIS

Background Information

It is believed that certain amendments need to be made to the Water Code to allow the Texas Department of Water Resources to administer effectively programs in water quality, solid waste, water rights, financial assistance, and water district supervision.

Synopsis

Water Rights - The changes would clarify the Department's authority to issue term permits (§4), require a permit for secondary use of State water (§22), make coastal basins part of the adjacent river basins for interbasin diversion purposes (§§1 and 3), assure that failure to commence or complete construction of a reservoir or diversion facility does not trigger automatic cancellation of a permit, certified filing, or certificate of adjudication (§1), and provide that water use permits be issued without a hearing if a hearing is not requested after publication of notice (§§1, 4 and 5).

Water Quality and Solid Waste - The changes would authorize criminal prosecution against all legal entities (§11), authorize criminal penalties for falsification of self-reporting data (§24), increase civil penalties for water pollution violations (§§2, 10, 26 and 27), authorize the State to contract for both removal and remedial actions under the State Superfund (§12), authorize the State to sue to recover its 10% share of cleanup costs under Superfund and place such recovered costs into the State Superfund (§§13 and 25), clarify that the Department is not liable under State law for any actions performed in good faith (§21), provide that notice and hearing is not required prior to obtaining a temporary restraining order under the Solid Waste Act (§20), provide that one notice be published concerning waste discharge permits (§§9 and 23), and clarify the authority to require owners and operators of solid waste facilities to obtain permits prior to the construction of facilities (§§17 and 19).

Water District Supervision - The changes would clarify the governing boards' responsibilities as to the annual audit (§§14 and 15), clarify that the American Institute of Certified Public Accountants' generally accepted auditing standards will prevail (§1), define financially dormant districts for the purpose of providing them the option of submitting a financial dormancy affidavit in lieu of an audit (§16), and allow districts to file a financial report instead of an audit if gross revenues are \$20,000 or less and cash and temporary investments are \$50,000 or less (§17).

Financial The changes would allow the Executive Director, instead of the Commission, to certify that the applicant has the right to use surface or groundwater prior to the Board's extension of financial assistance to the political subdivision (§§7 and 8).

Rulemaking Authority

It is the committee's opinion that this bill does not delegate rulemaking authority to a state officer, agency, department or institution.

Summary of Committee Action:

Public notice having been posted in accordance with the rules of the House, H.B. 1585 was heard in public hearing by the Committee on Natural Resources on April 12, 1983. It was moved that H.B. 1585 be reported back to the House with a recommendation that it do pass and not be printed and that a complete substitute be printed in lieu thereof and be placed on the Consent Calendar. Upon being duly seconded, the motion was adopted with a vote of seven ayes and no nays. Testifying on the bill was Susan Plettman, General Counsel, Texas Department of Water Resources and representing the Texas Department of Water Resource. Testifying in favor of the bill were James L. Taylor, representing the Harris County Pollution Control Department, and Winston E. Cochran, Jr., Attorney and representing the Harris County District Attorney's Office. No one testified against the bill.

Comparison of Original Bill to Substitute:

The original bill and substitute are essentially the same with the substitute making some nonsubstantive changes with respect to details and broadening the caption to make it clear that the bill provides for criminal offenses and penalties therefor.

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE

April 18, 1983


Honorable Tom Craddick, Chair
Committee on Natural Resources
House of Representatives
Austin, Texas

In Re: Committee Substitute for
House Bill No. 1585
By: Craddick

Sir:

In response to your request for a Fiscal Note on Committee Substitute for House Bill 1585 (relating to the jurisdiction, powers, and duties of and the enforcement by the Texas Department of Water Resources) this office has determined the following:

No significant fiscal implication to the State or units of local government is anticipated.


Jim Oliver
Director

Source: Department of Water Resources;
LBB Staff: JO, JH, NRH, DM

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE

April 12, 1983

Honorable Tom Craddick, Chair
Committee on Natural Resources
House of Representatives
Austin, Texas

In Re: House Bill No. 1585
By: Craddick

Sir:

In response to your request for a Fiscal Note on House Bill No. 1585 (relating to the jurisdiction, powers, and duties of and the enforcement by the Texas Department of Water Resources; providing penalties) this office has determined the following:

No significant fiscal implication to the State or units of local government is anticipated.


Jim Oliver
Director

Source: Department of Water Resources, LBB Staff: JO, JH, NRH, bdt

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ADOPTED

MAY 18 1983

Betty Munsey
Chief Clerk
House of Representatives

By Craddick

H.B. No. 1585

Substitute the following for H.B. No. 1585:

By *Craddick*

C.S.H.B. No. 1585

A BILL TO BE ENTITLED

AN ACT

relating to the jurisdiction, powers, and duties of and the
enforcement by the Texas Department of Water Resources; ^{providing criminal offenses and} providing
penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Sections 11.132, 11.173, 16.052, and 50.372,
Water Code, are amended to read as follows:

Sec. 11.132. NOTICE [~~OF--HEARING~~]. (a) Notice shall be
given to the persons who in the judgment of the commission may be
affected by an application, including those persons listed in
Subdivision (2), Subsection (d), of this section. The commission,
on the motion of a commissioner or on the request of the executive
director or any affected person, shall hold a public hearing on the
application. [~~The commission shall give notice of the hearing on~~
~~the application as prescribed by this section.~~

[~~(b)--In the notice, the commission shall--~~

[~~(1)--state the name and address of the applicant;~~

[~~(2)--state the date the application was filed;~~

[~~(3)--state the purpose and extent of the proposed~~
~~appropriation of water;~~

[~~(4)--identify the source of supply and the place where~~
~~the water is to be stored or taken or diverted from the source of~~
~~supply;~~

[~~(5)--specify the time and place of the hearing; and~~

1 [~~(6)~~--give--any--additional--information--the--commission
2 considers-necessary-]

3 **(b)** [~~(e)~~] If the proposed use is for irrigation, the
4 commission shall include in the notice a general description of the
5 location and area of the land to be irrigated.

6 **(c)** In the notice, the commission shall:

7 (1) state the name and address of the applicant;

8 (2) state the date the application was filed;

9 (3) state the purpose and extent of the proposed
10 appropriation of water;

11 (4) identify the source of supply and the place where
12 the water is to be stored or taken or diverted from the source of
13 supply;

14 (5) specify the time and location where the commission
15 will consider the application; and

16 (6) give any additional information the commission
17 considers necessary.

18 **(d)** The commission may act on the application without
19 holding a public hearing if all of the following conditions are
20 met:

21 (1) not less than 30 days before the date of action on
22 the application by the commission, the applicant has published the
23 commission's notice of the application at least once in a newspaper
24 regularly published or circulated within the section of the state
25 where the source of water is located;

26 (2) not less than 30 days before the date of action on
27 the application by the commission, the commission mails a copy of

1 the notice by first-class mail, postage prepaid, to:

2 (A) each claimant or appropriator of water from
3 the source of water supply, the record of whose claim or
4 appropriation has been filed in the department; and

5 (B) all navigation districts within the river
6 basin concerned; and

7 (3) within 30 days after the date of the newspaper
8 publication of the commission's notice, a public hearing has not
9 been requested in writing by a commissioner, the executive
10 director, or an affected person who objects to the application.

11 (e) The inadvertent failure of the commission to mail a
12 notice under Subdivision (2), Subsection (d) of this section to a
13 navigation district that is not a claimant or appropriator of water
14 may not prevent the commission's consideration of the application.

15 (f) If, on the date specified in the notice prescribed by
16 Subsection (c) of this section, the commission determines that a
17 public hearing must be held, the matter shall be remanded for
18 hearing without the necessity of issuing further notice other than
19 advising all parties of the time and place where the hearing is to
20 convene. [The-notice-shall-be-published-once-a-week-for-two
21 consecutive-weeks-before-the-date-stated-in-the-notice-for-the
22 hearing-in-some-newspaper-having-a-general-circulation-in-the
23 section-of-the-state-where-the-source-of-water-is-located-

24 [(e)--The--commission-shall-also-mail-a-copy-of-the-notice-by
25 first-class-mail,-postage-prepaid,-to-each-claimant-or-appropriator
26 of-water-from-the-source-of-water-supply,-the-record-of-whose-claim
27 or-appropriation-has-been-filed-in-the-office-of-the-commission-

The--notice--shall--also--be--mailed--by--first-class-mail,-postage prepaid,-to--all--navigation--districts---within---the---watershed concerned.---The--inadvertent--failure--of--the--commission--to--mail--a notice--to--a--navigation--district--which--is--not--a--claimant--or appropriater---of--water--does--not--prevent--the--hearing--on--the application-

[(f) --The notice shall be mailed and first published not less than 20 days before the date set for the hearing.]

Sec. 11.173. CANCELLATION IN WHOLE. (a) If no part of the water authorized to be appropriated under a permit, certified filing, or certificate of adjudication has been put to beneficial use at any time during the 10-year period immediately preceding the cancellation proceedings authorized by this subchapter, then the appropriation is presumed to have been wilfully abandoned, and the permit, certified filing, or certificate of adjudication is subject to cancellation in whole as provided by this subchapter.

(b) Cancellation proceedings for failure to utilize water under a permit for which time limitations for commencement and completion of construction have been set by the commission under Section 11.145 of this code and for which construction has not begun or been completed shall be brought under Section 11.146 of this code, and not under this subchapter.

Sec. 16.052. INTERBASIN WATER TRANSFER. The executive director shall not prepare or formulate a plan which contemplates or results in the removal of state [surface] water from the river basin of origin and its adjoining coastal basins if the water supply involved will be required for reasonably foreseeable water

supply requirements within the river basin of origin and its
adjoining coastal basins during the next ensuing 50-year period,
except on a temporary, interim basis.

Sec. 50.372. FORM OF AUDIT. (a) All audits required by
Subsection (a), Section 50.371, of this code shall be performed
according to the generally accepted auditing standards of the
American Institute of Certified Public Accountants.

(b) The audit report shall include the audited financial
statements presented in conformity with the American Institute of
Certified Public Accountants' generally accepted accounting
principles and the independent auditor's opinion regarding those
financial statements.

(c) The executive director shall adopt an accounting and
auditing manual to be used by districts to comply with Subsection
(a), Section 50.371, of this code.

(d) If any part of the manual is inconsistent with the
American Institute of Certified Public Accountants' generally
accepted auditing standards or generally accepted accounting
principles, the American Institute of Certified Public Accountants'
standards and principles prevail. [The-executive-director-shall
adopt-an-accounting-and-auditing-manual,-and--except--as--otherwise
provided--by--this-manual,-the-audit-shall-be-performed-according-to
the-generally-accepted-auditing-standards-adopted-by--the--American
Institute--of-Certified-Public-Accountants,-hereinafter-referred-to
as-generally-accepted-auditing-standards,-and--shall--include--the
auditor's--representation--that--the-financial-statements-have-been
prepared--in--accordance---with---generally---accepted---accounting

1 ~~principles-as-adopted-by-the-American-Institute-of-Certified-Public~~
2 ~~Accountants,---hereinafter---referred---to---as---generally---accepted~~
3 ~~accounting-principles-]~~

4 SECTION 2. (a) Section 26.122, Water Code (the text of
5 which was to be effective until delegation of NPDES permit
6 authority), is amended to read as follows:

7 Sec. 26.122. CIVIL PENALTY. A person who violates any
8 provision of this chapter or any rule, permit, or order of the
9 department is subject to a civil penalty of not less than \$100
10 [~~\$50~~] nor more than \$10,000 [~~\$1,000~~] for each act of violation and
11 for each day of violation to be recovered as provided in this
12 subchapter.

13 (b) The delegation of NPDES permit authority does not affect
14 Section 26.122, Water Code, as amended by Subsection (a) of this
15 section.

16 SECTION 3. Section 11.085, Water Code, is amended to read as
17 follows:

18 Sec. 11.085. INTERWATERSHED AND INTERBASIN TRANSFERS. (a)
19 No person may take or divert any of the water of the ordinary flow,
20 underflow, or storm flow of any stream, watercourse, or watershed
21 in this state into any other natural stream, watercourse, or
22 watershed to the prejudice of any person or property situated
23 within the watershed from which the water is proposed to be taken
24 or diverted.

25 (b) No person may transfer state water beyond the river
26 basin of origin and its adjoining coastal basins [~~from--one~~
27 ~~watershed--to--another~~] without first applying for and receiving a

1 permit from the commission to do so. Before issuing such a
2 permit, the commission shall hold a hearing to determine the rights
3 that might be affected by the transfer. The commission shall give
4 notice and hold the hearing in the manner prescribed by its
5 procedural rules.

6 (c) A person who takes or diverts water in violation of this
7 section is guilty of a misdemeanor and upon conviction is
8 punishable by a fine of not less than \$100 nor more than \$500 or by
9 confinement in the county jail for not more than six months.

10 (d) A person commits a separate offense each day he
11 continues to take or divert water in violation of this section.

12 SECTION 4. Subsection (a), Section 11.134, Water Code, is
13 amended to read as follows:

14 (a) After consideration of the application is complete [~~the~~
15 ~~hearing~~], the commission shall make a written decision granting or
16 denying the application. The application may be granted or denied
17 in whole or in part, and, if granted, may be for a specified term
18 of years.

19 SECTION 5. Subsections (d) and (f), Section 11.143, Water
20 Code, are amended to read as follows:

21 (d) Except as otherwise specifically provided by this
22 subsection, before [~~Befere~~] the commission may approve the
23 application and issue the permit, it shall give notice and hold a
24 hearing as prescribed by this section. The commission may act on
25 the application without holding a public hearing if all of the
26 following conditions are met:

27 (1) not less than 30 days before the date of action on

1 the application by the commission, the applicant has published the
2 commission's notice of the application at least once in a newspaper
3 regularly published or circulated within the section of the state
4 where the source of water is located;

5 (2) not less than 30 days before the date of action on
6 the application by the commission, the commission mails a copy of
7 the notice by first-class mail, postage prepaid, to each person
8 whose claim or appropriation has been filed with the department and
9 whose diversion point is downstream from that described in the
10 application; and

11 (3) within 30 days after the date of the newspaper
12 publication of the commission's notice, a public hearing is not
13 requested in writing by a commissioner, the executive director, or
14 an affected person who objects to the application.

15 (f) If on the date specified in the notice prescribed by
16 Subsection (d) of this section, the commission determines that a
17 public hearing must be held, the matter shall be remanded for
18 hearing without the necessity of issuing further notice other than
19 advising all parties of the time and place where the hearing is to
20 convene. [The--notice--shall--be--published--only--once,--at--least--20
21 days--before--the--date--stated--in--the--notice--for--the--hearing--on--the
22 application,--in--a--newspaper--having--general--circulation--in--the
23 county--where--the--dam--or--reservoir--is--located:---At--least--15--days
24 before--the--date--set--for--the--hearing,--the--commission--shall--transmit
25 a--copy--of--the--notice--by--first--class--mail--to--each--person--whose--claim
26 or--appropriation--has--been--filed--with--the--department--and--whose
27 diversion---point---is---downstream--from--that--described--in--the

1 application-]

2 SECTION 6. Subsection (b), Section 12.113, Water Code, is
3 amended to read as follows:

4 (b) The department shall deposit all costs collected under
5 Subchapter G [F], Chapter 11 of this code in the State Treasury to
6 the credit of the water rights administration fund, from which the
7 department shall pay all expenses necessary to efficiently
8 administer and perform the duties described in Sections 11.325
9 through 11.335 of this code.

10 SECTION 7. Section 15.104, Water Code, is amended to read as
11 follows:

12 Sec. 15.104. CERTIFICATE OF EXECUTIVE DIRECTOR [~~COMMISSION~~]
13 OR APPROVAL BY EXECUTIVE DIRECTOR [~~COMMISSION~~]. (a) Except as
14 provided by Subsection (b) of this section, the board shall not
15 deliver funds pursuant to an application for financial assistance
16 from the loan fund until the executive director has furnished the
17 board written evidence [~~political--subdivision-has-furnished-the~~
18 ~~board-a-resolution-adopted-by-the-commission~~] certifying:

19 (1) that an applicant proposing surface-water
20 development has the necessary water right authorizing it to
21 appropriate and use the water that the project will provide; or

22 (2) that an applicant proposing underground water
23 development has the right to use water that the project will
24 provide.

25 (b) If an applicant includes a proposal for a waste water
26 treatment plant, [~~the-part-of-the-application-relating-to-the-waste~~
27 ~~water--treatment--plant--does--not--need--to--be--certified--by-the~~

1 ~~commission, but~~] the board may not deliver funds for the waste
2 water treatment plant until the political subdivision has obtained
3 written evidence of approval of the plans for the waste water
4 treatment plant from the executive director.

5 SECTION 8. Section 17.123, Water Code, is amended to read as
6 follows:

7 Sec. 17.123. CERTIFICATE OF EXECUTIVE DIRECTOR ~~[COMMISSION]~~
8 OR APPROVAL BY EXECUTIVE DIRECTOR ~~[COMMISSION]~~. (a) Except as
9 provided in Subsection (b) of this section, the board shall not
10 deliver funds pursuant to an application for financial assistance
11 until the executive director has furnished the board written
12 evidence ~~[political--subdivision--has--furnished---the---board---a~~
13 ~~resolution-adopted-by-the-commission]~~ certifying:

14 (1) that an applicant proposing surface-water
15 development has the necessary water right authorizing it to
16 appropriate and use the water which the project will provide; or

17 (2) that an applicant proposing underground water
18 development has the right to use water that the project will
19 provide.

20 (b) If an application includes a proposal for a waste water
21 treatment plant, ~~[the-part-of-the-application-relating-to-the-waste~~
22 ~~water-treatment--plant--does--not--need--to--be--certified--by--the~~
23 ~~commission, but]~~ the board may not deliver funds for the waste
24 water treatment plant until the political subdivision has obtained
25 written evidence of approval of the plans for the waste water
26 treatment plant from the executive director.

27 SECTION 9. Subsection (a), Section 26.022, Water Code, is

1 amended to read as follows:

2 (a) Except as otherwise provided in Sections 26.0191,
3 26.028, and 26.176 of this code, the provisions of this section
4 apply to all hearings conducted in compliance with this chapter.

5 SECTION 10. (a) Section 26.123, Water Code (the text of
6 which was to be effective until delegation of NPDES permit
7 authority), is amended to read as follows:

8 Sec. 26.123. ENFORCEMENT BY DEPARTMENT. (a) Whenever it
9 appears that a person has violated or is violating or is
10 threatening to violate any provision of this chapter or any rule,
11 permit, or order of the department, then the executive director may
12 have a civil suit instituted in a district court for injunctive
13 relief to restrain the person from continuing the violation or
14 threat of violation, or for the assessment and recovery of a civil
15 penalty of not less than \$100 [~~\$50~~] nor more than \$10,000 [~~\$1,000~~]
16 for each act of violation and for each day of violation, or for
17 both injunctive relief and civil penalty.

18 (b) On application for injunctive relief and a finding that
19 a person is violating or threatening to violate any provision of
20 this chapter or any rule, permit, or order of the department, the
21 district court shall grant the injunctive relief the facts may
22 warrant.

23 (c) At the request of the executive director, the attorney
24 general shall institute and conduct a suit in the name of the State
25 of Texas for injunctive relief or to recover the civil penalty or
26 for both injunctive relief and penalty as authorized in Subsection
27 (a) of this section.

1 (b) The delegation of NPDES permit authority does not affect
2 Section 26.123, Water Code, as amended by Subsection (a) of this
3 section.

4 SECTION 11. Subdivision (3), Section 26.211, Water Code, is
5 amended to read as follows:

6 (3) "Person" means an individual, ~~[or]~~ private
7 corporation, organization, government or governmental subdivision
8 or agency, business trust, partnership, association, or any other
9 legal entity.

10 SECTION 12. Subsection (c), Section 26.303, Water Code, is
11 amended to read as follows:

12 (c) If the department enters into a contract or cooperative
13 agreement under Section 104(c)(3) of the environmental response
14 law, the board may ~~[shall]~~ include in the contract or agreement
15 terms and conditions:

16 (1) to assure future maintenance of the removal and
17 remedial actions provided for the expected life of those actions as
18 determined by the federal government;

19 (2) to assure the availability of a hazardous waste
20 disposal facility acceptable to the federal government that
21 complies with Subtitle C of the federal Solid Waste Disposal Act
22 (42 U.S.C. 6921 et seq.) for any necessary off-site storage,
23 destruction, treatment, or secure disposition of the hazardous
24 substances, pollutants, or contaminants; and

25 (3) to assure payment by the state of:

26 (A) 10 percent of the costs of the removal and
27 remedial actions, including future maintenance; or

(B) at least 50 percent or more of the costs as determined appropriate by the federal government, taking into account the degree of responsibility of the state for any amount spent in response to a release at a disposal facility that was owned by the state at the time of disposal of hazardous substances at the disposal facility.

SECTION 13. Subsection (b), Section 26.304, Water Code, is amended to read as follows:

(b) The fund shall include money appropriated to it by the legislature, ~~[and]~~ any ~~[either]~~ money received for this purpose by the department from the federal government, and all money recovered by the state under Section 26.308 of this code.

SECTION 14. Subsections (a) and (d), Section 50.371, Water Code, are amended to read as follows:

(a) The governing board of each district created under the general law or by special act of the legislature has the overall responsibility to adopt sound accounting policies, prepare reliable financial statements, and at the expense of the district, engage an independent auditor before the end of the fiscal year for an annual audit of the district's fiscal accounts and records ~~[shall have the district's--fiscal--accounts--and--records--audited--annually--at--the expense--of--the--district]~~.

(d) The governing board of each district shall assure that the ~~[The]~~ audit required by this section shall be completed within 120 days after the close of the district's fiscal year, except for districts audited by the state auditor; district audits by the state auditor shall be completed within 12 months of the close of

1 the district's fiscal year.

2 SECTION 15. Subsections (a), (b), and (c), Section 50.374,
3 Water Code, are amended to read as follows:

4 (a) After the governing board of the district has approved
5 the audit, it shall submit a copy of the report including a
6 certificate indicating the governing board's approval of the
7 report. The certificate must be in the format prescribed by the
8 executive director. The governing board shall submit the report to
9 the executive director for filing within 135 days after the close
10 of the district's fiscal year unless the audit is performed by the
11 state auditor, in which case it will be filed in accordance with
12 Section 50.104 of this code.

13 (b) If the governing board of the district refuses to
14 approve the annual audit report, the governing board shall submit a
15 copy of the report, including a certificate that indicates the
16 governing board's disapproval of the report and reasons for that
17 disapproval. The certificate must be in the format prescribed by
18 the executive director. The governing board shall submit the
19 report to the executive director for filing within 135 days after
20 the close of the district's fiscal year, except as specified in
21 Subsection (a) of this section[7-accompanied-by--a--statement--from
22 the--board--explaining--the--reasons-for-its-failure-to-approve-the
23 report].

24 (c) Copies of the audit or the annual financial dormancy
25 affidavit or annual financial report described in Sections 50.377
26 and 50.378 of this code shall be filed annually in the office of
27 the district and with the city secretary or other designated city

1 official in whose extraterritorial jurisdiction the district is
 2 located. If the district is not located within the
 3 extraterritorial jurisdiction of a city, the audit, annual
 4 financial dormancy affidavit, or annual financial report shall be
 5 filed annually with the clerk of each [the] county within which the
 6 district is located[~~,-provided,-however,-this-subsection-shall--not~~
 7 ~~apply--to-any-district-which-is-located-within-all-or-parts-of-more~~
 8 ~~than-two-counties,-however,-each-such-district-shall-file-a-copy-of~~
 9 ~~its-annual-audit,-annual-financial-dormancy--affidavit,-or--annual~~
 10 ~~financial--report--with-the-county-clerk-of-the-county-within-which~~
 11 ~~the-greater-part-of-the-district-resides]~~.

12 SECTION 16. Subsection (a), Section 50.377, Water Code, is
 13 amended to read as follows:

14 (a) Those districts which can satisfy all [the] criteria
 15 contained in this section are defined as financially dormant and
 16 may elect to submit to the executive director for filing a
 17 financial dormancy affidavit in lieu of compliance with Section
 18 50.371 of this code:

19 (1) the district had \$500 or less [no] revenue from
 20 operations, tax assessments, or any other sources during the
 21 calendar year;

22 (2) the district had \$500 or less [no] expenditures of
 23 funds during the calendar year; [and]

24 (3) the district had no bonds or any other liabilities
 25 outstanding during the calendar year; and

26 (4) the district had no cash or investments in excess
 27 of \$500 at any time during the calendar year.

1 SECTION 17. Subsection (a), Section 50.378, Water Code, is
2 amended to read as follows:

3 (a) A district may elect to file annual financial reports
4 with the executive director and the other governmental entities
5 prescribed by Subsection (c) of Section 50.374 of this code in lieu
6 of the district's compliance with Section 50.371 of this code
7 provided:

8 (1) the district had no bonds or other long-term (more
9 than one year) liabilities outstanding during the fiscal period;

10 (2) the district did not have gross revenues in excess
11 of \$20,000 [~~\$5,000~~] during the fiscal period; and

12 (3) the district's cash[~~receivables~~] and temporary
13 investments were not in excess of \$50,000 at any time [~~\$20,000~~]
14 during the fiscal period.

15 SECTION 18. Subsection (e), Section 4, Solid Waste Disposal
16 Act (Article 4477-7, Vernon's Texas Civil Statutes), is amended to
17 read as follows:

18 (e) Except as provided in Subsection (f) of this section
19 with respect to certain industrial solid wastes, each state agency
20 has the power to require and issue permits authorizing and
21 governing the construction, operation, and maintenance of solid
22 waste facilities used for the storage, processing, or disposal of
23 solid waste. This power may be exercised by a state agency only
24 with respect to the solid waste over which it has jurisdiction
25 under this Act. If this power is exercised by a state agency, that
26 state agency shall prescribe the form of and reasonable
27 requirements for the permit application and the procedures to be

1 followed in processing the application, to the extent not otherwise
2 provided for in this subsection. The following additional
3 provisions apply if a state agency exercises the power authorized
4 in this subsection.[-]

5 (1) The state agency to whom the permit application is
6 submitted shall mail a copy of the application or a summary of its
7 contents to the Texas Air Control Board, to the other state agency,
8 to the mayor and health authorities of any city or town within
9 whose territorial limits or extraterritorial jurisdiction the solid
10 waste facility is located, and to the county judge and health
11 authorities of the county in which the facility is located. The
12 governmental entities to whom the information is mailed shall have
13 a reasonable time, as prescribed by the state agency to whom the
14 application was originally submitted, to present comments and
15 recommendations on the permit application before that state agency
16 acts on the application.

17 (2) A separate permit shall be issued for each solid waste
18 facility. The permit shall include the names and addresses of the
19 person or persons who own the land where the solid waste facility
20 is located and the person who is or will be the operator or person
21 in charge of the facility; a legal description of the land on which
22 the facility is located; and the terms and conditions on which the
23 permit is issued, including the duration of the permit. The state
24 agency in its discretion shall have the power to process a permit
25 application for purpose of determining land use compatibility
26 alone, and at another time, if the site location is acceptable,
27 consider technical matters related to the application. Where this

1 power is exercised, a public hearing may be held for each
2 determination in accordance with Paragraph (4) of this Subsection
3 (e).

4 (3) The state agency may amend, extend, or renew any permit
5 it issues in accordance with reasonable procedures prescribed by
6 the state agency. The procedures prescribed in Paragraph (1) of
7 this Subsection (e) for permit applications apply also to
8 applications to amend, extend, or renew a permit.

9 (4) Before a permit is issued, amended, extended, or
10 renewed, the state agency to which the application is submitted
11 shall provide an opportunity for a hearing to the applicant and
12 persons affected; the state agency may also hold such a hearing
13 upon its own motion. The state agency by rule shall establish
14 procedures for public notice and any public hearing authorized
15 under this paragraph. A hearing on a permit involving a solid
16 waste facility for hazardous industrial solid waste must include
17 one session held in the county in which the solid waste facility is
18 located. Hearings under this paragraph shall be conducted in
19 accordance with the hearing rules adopted by the state agency and
20 the applicable provisions of the Administrative Procedure and Texas
21 Register Act, as amended (Article 6252-13a, Vernon's Texas Civil
22 Statutes).

23 (5) Before a permit is issued, amended, extended, or
24 renewed, the state agency to which the application is submitted may
25 require the permittee to execute a bond or give other financial
26 assurance conditioned on the permittee's satisfactorily operating
27 and closing the solid waste facility. The state agency to which

1 the application is submitted shall require an assurance of
2 financial responsibility as may be necessary or desirable
3 consistent with the degree and duration of risks associated with
4 the processing, storage, or disposal of specified solid waste.
5 Financial requirements established by the state agency shall at a
6 minimum be consistent with the federal requirements established
7 under the federal Solid Waste Disposal Act, as amended by the
8 Resource Conservation and Recovery Act of 1976, 42 U.S.C., 6901 et
9 seq., as amended.

10 (6) If a permit is issued, amended, renewed, or extended by
11 a state agency in accordance with this Subsection (e), the owner or
12 operator of the solid waste facility does not need to obtain a
13 license for the same facility from a county, or from a political
14 subdivision exercising the authority granted in Section 6 of this
15 Act.

16 (7) A permit issued under this Act is issued only to the
17 person in whose name the application is made and is issued only for
18 the facility described in the permit. A permit may not be
19 transferred without prior written notice to and prior written
20 approval by the state agency which issued it.

21 (8) The state agency has the authority, for good cause, to
22 revoke or amend any permit it issues for reasons pertaining to
23 public health, air or water pollution, land use, or violation of
24 this Act or of any other applicable laws or rules controlling the
25 management of solid waste. The state agency using this authority
26 shall notify the governmental entities named in Paragraph (1) of
27 this Subsection (e) and provide an opportunity for a hearing to the

1 permittee and persons affected. The state agency may hold such a
2 hearing upon its own motion. The state agency by rule shall
3 establish procedures for public notice and any public hearing
4 authorized under this paragraph. Hearings under this paragraph
5 shall be conducted in accordance with the hearing rules adopted by
6 the state agency and the applicable provisions of the
7 Administrative Procedure and Texas Register Act, as amended
8 (Article 6252-13a, Vernon's Texas Civil Statutes).

9 (9) Manufacturing and processing establishments, commonly
10 known as rendering plants, which process for any purpose waste
11 materials originating from animals, poultry, and fish (all
12 hereinafter referred to as "animals") and materials of vegetable
13 origin, including without limitation animal parts and scraps,
14 offal, paunch manure, and waste cooking grease of animal and
15 vegetable origin are subject to regulation under the industrial
16 solid waste provisions of this Act and may also be regulated under
17 Chapter 26, Water Code. When a rendering establishment is owned by
18 a person who operates the rendering establishment as an integral
19 part of an establishment engaged in manufacturing or processing for
20 animal or human consumption food derived wholly or in part from
21 dead, slaughtered, or processed animals, poultry, or fish, the
22 combined business may operate under authority of a single permit
23 issued pursuant to Chapter 26, Water Code. The provisions of this
24 subsection do not apply to those rendering plants in operation and
25 production on or before August 27, 1973.

26 (10) Each state agency may issue an emergency order, either
27 mandatory or prohibitory in nature, regarding any activity of solid

1 waste management within its jurisdiction, whether such activity is
2 covered by a permit or not, if the state agency determines that the
3 activity is creating or will cause extensive or severe property
4 damage or economic loss to others or is posing an immediate and
5 serious threat to human life or health and that other procedures
6 available to the state agency to remedy or prevent the occurrence
7 of the situation will result in unreasonable delay. The order may
8 be issued without notice and hearing, or with such notice and
9 hearing as the state agency deems practicable under the
10 circumstances.

11 (i) If an emergency order is issued under this authority
12 without a hearing, the issuing agency shall fix a time and place
13 for a hearing to be held in accordance with the departmental rules
14 by the state agency, so as to affirm, modify, or set aside the
15 emergency order.

16 (ii) The requirements of Paragraph (4) of this subsection
17 relating to public notice do not apply to such a hearing, but such
18 general notice of the hearing shall be given in accordance with the
19 departmental rules of the state agency.

20 SECTION 19. Subsection (a), Section 5, Solid Waste Disposal
21 Act (Article 4477-7, Vernon's Texas Civil Statutes), is amended to
22 read as follows:

23 (a) Every county has the solid waste management powers which
24 are enumerated in this Section 5. However, the exercise of the
25 licensing authority and other powers granted to counties by this
26 Act does not preclude the department or the department of water
27 resources from exercising any of the powers vested in the

1 department or the department of water resources under other
2 provisions of this Act, including specifically the provisions
3 authorizing the department and the department of water resources to
4 issue permits for the construction, operation, and maintenance of
5 facilities for the processing, storage, or disposal of solid waste.
6 The powers specified in Subsections (d) and (e) of this section and
7 Section 18 of the County Solid Waste Control Act (Article 4477-8,
8 Vernon's Texas Civil Statutes) may not be exercised by a county
9 with respect to the industrial solid waste disposal practices and
10 areas to which Subsection (f) of Section 4 of this Act applies.
11 The department or the department of water resources, by specific
12 action or directive, may supersede any authority or power granted
13 to or exercised by a county under this Act, but only with respect
14 to those matters which are, under this Act, within the jurisdiction
15 of the state agency acting.

16 SECTION 20. Subdivision (6), Subsection (a), Section 8,
17 Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil
18 Statutes), is amended to read as follows:

19 (6) A suit for injunctive relief or for recovery of a civil
20 penalty, or for both injunctive relief and penalty, may be brought
21 either in the county where the defendant resides or in the county
22 where the violation or threat of violation occurs. In any suit
23 brought to enjoin a violation or threat of violation of this Act or
24 of any rule, permit, license or other order of the department of
25 water resources, the department, a county, or a political
26 subdivision exercising the authority granted in Section 6 of this
27 Act, the court may grant the governmental entity bringing the suit,

1 without bond or other undertaking, any prohibitory or mandatory
2 injunction the facts may warrant, including temporary restraining
3 orders [~~after--notice--and--hearing~~], temporary injunctions, and
4 permanent injunctions.

5 SECTION 21. Chapter 5, Water Code, is amended by adding
6 Section 5.358 to read as follows:

7 Sec. 5.358. LIABILITY OF DEPARTMENT. The department,
8 including the board, commission, and executive director, and its
9 employees and agents are not liable for any damages that may occur,
10 in whole or in part, as a result of acts done or omitted, any
11 decision made, or policy made or followed in a good faith effort to
12 carry out this code and other laws of this state.

13 SECTION 22. Chapter 11, Water Code, is amended by adding
14 Section 11.1221 to read as follows:

15 Sec. 11.1221. SECONDARY USE AUTHORIZATION REQUIRED. Any
16 reuse of state water for purposes other than those authorized by
17 the water right may be made only if authorized by the commission
18 through the granting of a water right or amendment to a water
19 right.

20 SECTION 23. Section 26.028, Water Code, is amended by adding
21 Subsections (e) and (f) to read as follows:

22 (e) In the notice prescribed by Subsection (a) of this
23 section, the commission shall:

- 24 (1) state the name and address of the applicant;
25 (2) state the location of the applicant's facilities
26 or operations;
27 (3) identify the nature of the application;

1 (4) specify the time and location where the commission
2 will consider the application; and

3 (5) give any additional information the commission
4 considers necessary.

5 (f) If, on the date specified in the notice prescribed by
6 Subsection (e) of this section, the commission determines that a
7 public hearing must be held, the matter shall be remanded for
8 hearing without the necessity of issuing further notice other than
9 advising all parties of the time and place where the hearing is to
10 convene.

11 SECTION 24. Section 26.212, Water Code (the text of which is
12 effective until delegation of NPDES Authority), is amended by
13 adding Subsection (c) to read as follows:

14 (c) No person may knowingly make any false statement,
15 representation, or certification in any application, notice,
16 record, report, plan, or other document filed or required to be
17 maintained under this chapter, or under any rule, permit, or other
18 order of the department.

19 SECTION 25. Chapter 26, Water Code, is amended by adding
20 Section 26.308 to read as follows:

21 Sec. 26.308. LIABILITY AND STATE RECOVERY OF COSTS. (a) As
22 used in this section, "owner," "operator," "disposal," "transport,"
23 "national contingency plan," and "natural resources" have the
24 meanings provided by the environmental response law.

25 (b) Notwithstanding any other law, and subject to the
26 defenses provided by Section 107(b) of the environmental response
27 law, any person listed in Subsection (c) of this section shall be

1 liable for:

2 (1) all costs of removal or remedial action incurred
3 by this state that are not inconsistent with the national
4 contingency plan; and

5 (2) damages for injury to, destruction of, or loss of
6 natural resources, including the reasonable costs of assessing that
7 injury, destruction, or loss resulting from the release.

8 (c) The persons who are liable under Subsection (b) of this
9 section are:

10 (1) an owner or operator of a disposal facility from
11 which there is a release or a threatened release of a hazardous
12 substance that causes the occurrence of response costs;

13 (2) a person who at the time of disposal of a
14 hazardous substance owned or operated a disposal facility at which
15 those hazardous substances were disposed of and from which there is
16 a release, or a threatened release of a hazardous substance that
17 causes the occurrence of response costs;

18 (3) a person who, by contract, agreement, or
19 otherwise, arranged with a transporter for transport for disposal
20 or treatment of hazardous substances owned or possessed by that
21 person, or by any other party or entity, at any disposal facility
22 owned or operated by another party or entity and containing such
23 hazardous substances, from which there is a release or a threatened
24 release of a hazardous substance that causes the occurrence of
25 response costs; and

26 (4) any person who accepts or accepted any hazardous
27 substances for transport to disposal or treatment facilities or

1 sites selected by that person from which there is a release or
 2 threatened release of a hazardous substance that causes the
 3 occurrence of response costs.

4 (d) The executive director may request that the attorney
 5 general institute a suit in a district court in Travis County
 6 against a person listed in Subsection (c) of this section to
 7 recover the state's costs and damages under Subsection (b) of this
 8 section.

9 (e) At the request of the executive director, the attorney
 10 general shall institute and conduct a suit in the name of the State
 11 of Texas to recover the state's costs and damages under Subsection
 12 (b) of this section.

13 SECTION 26. Section 26.122, Water Code (the text of which
 14 was to take effect on delegation of NPDES permit authority), as
 15 follows, is repealed:

16 [~~Sec. 26.122. --CIVIL-PENALTY. --(a)--A person who violates any~~
 17 ~~provision of this chapter, other than Subsection (d) or Subsection~~
 18 ~~(e) of Section 21.251, or who violates any rule, permit, or order~~
 19 ~~of the department is subject to a civil penalty of not less than~~
 20 ~~\$50 nor more than \$1,000 for each act of violation and for each day~~
 21 ~~of violation to be recovered as provided in this subchapter.~~

22 [~~(b)--A person who violates Subsection (d) or Subsection (e)~~
 23 ~~of Section 21.251 of this chapter is subject to a civil penalty of~~
 24 ~~not more than \$10,000 for each act of violation and for each day of~~
 25 ~~violation, to be recovered as provided in this subchapter,~~
 26 ~~provided, however, that in suits instituted pursuant to this~~
 27 ~~subsection, the civil penalty, if any, assessed against the person~~

1 who-committed-or-who-is-committing-the-violation-shall-be--no--more
 2 than-\$1,000-for-each-act-of-violation-and-for-each-day-of-violation
 3 where--the--violation-is-of-a-limitation-or-condition-included-in-a
 4 permit--issued--by--the--department--prior--to--delegation--by--the
 5 Administrator--of-the-United-States-Environmental-Protection-Agency
 6 of-NPDES-permit-authority-under-Section-402(b)-of-the-Federal-Water
 7 Pollution-Control-Act,-or-of-any-limitation-or--condition--included
 8 in--an--identified-state-supplement-to-an-NPDES-permit-issued-after
 9 NPDES-permit-delegation-by-the-Administrator-of-the--United--States
 10 Environmental-Protection-Agency.]

11 SECTION 27. Section 26.123, Water Code (the text of which
 12 was to take effect on delegation of NPDES permit authority), as
 13 follows, is repealed:

14 [Sec.-26.123.--ENFORCEMENT--BY--DEPARTMENT.--(a)--Whenever-it
 15 appears--that--a--person--has--violated--or--is--violating--or--is
 16 threatening--to--violate--any-provision-of-this-chapter,-other-than
 17 Subsection-(d)-or-Subsection-(e)-of-Section-21.251,-or-has-violated
 18 or-is-violating,-or-is-threatening-to-violate,-any-rule,-permit,-or
 19 order-of-the-department,-then-the-executive--director--may--have--a
 20 civil--suit-instituted-in-a-district-court-for-injunctive-relief-to
 21 restrain-the-person-from-continuing--the--violation--or--threat--of
 22 violation,-or-for-the-assessment-and-recovery-of-a-civil-penalty-of
 23 not--less--than--\$50-nor-more-than-\$1,000-for-each-act-of-violation
 24 and-for-each-day-of-violation,-or-for-both--injunctive--relief--and
 25 civil-penalty.

26 [(b)--Whenever--it--appears--that-a-person-has-violated-or-is
 27 violating,-or-is-threatening-to-violate,-Subchapter--(d)---or

Subchapter--(e)--of--Section--21.251--of--this--chapter,--then--the
 executive-director-may-have-a-civil-suit-instituted-in--a--district
 court--for-injunctive-relief-to-restrain-the-person-from-continuing
 the-violation-or-threat-of-violation,--or--for--the--assessment--and
 recovery--of--a-civil-penalty-of-not-more-than-\$10,000-for-each-act
 of-violation-and-for-each-day-of-violation,--or-for-both--injunctive
 relief---and--civil--penalty,--provided,--however,--that--in--suits
 instituted-pursuant-to-this-subsection,--the-civil-penalty,--if--any,
 assessed--against-the-person-who-committed-or-who-is-committing-the
 violation-shall-be-no-more-than-\$1,000-for-each--act--of--violation
 and--for--each--day--of--violation--where--the--violation--is--of-a
 limitation-or-condition-included-in-a-permit-issued--by--the--board
 prior--to--delegation--by--the--Administrator--of-the-United-States
 Environmental-Protection-Agency-of--NPDES--permit--authority--under
 Section--402(b)--of--the-Federal-Water-Pollution-Control-Act,--or-of
 any--limitation--or--condition--included--in--an--identified--state
 supplement--to-an-NPDES-permit-issued-after-NPDES-permit-delegation
 by-the-Administrator-of-the-United-States-Environmental--Protection
 Agency.

[(e)--On-application-for-injunctive-relief-and-a-finding-that
 a--person--is--violating-or-threatening-to-violate-any-provision-of
 this-chapter-or-any-rule,--permit,--or-order-of-the--department,--the
 district--court--shall--grant--the--injunctive-relief-the-facts-may
 warrant.

[(d)--At-the-request-of-the-executive-director,--the--attorney
 general-shall-institute-and-conduct-a-suit-in-the-name-of-the-State
 of--Texas--for-injunctive-relief-or-to-recover-the-civil-penalty-or

1 ~~for both injunctive relief and penalty as authorized in Subsection~~
2 ~~(a) or (b) of this section.~~]

3 SECTION 28. (a) This Act takes effect September 1, 1983,
4 and applies only to applications filed on or after that date.
5 Applications filed with the Texas Department of Water Resources
6 before September 1, 1983, are governed by the law that was in
7 effect at the time the application was filed, and that law is
8 continued in effect for that purpose.

9 (b) This Act applies only to a violation committed on or
10 after September 1, 1983. Violations committed before September 1,
11 1983, are subject to the laws that existed at the time the
12 violation occurred, and those laws are continued in effect for that
13 purpose. For the purpose of this Act, a violation occurs before
14 September 1, 1983, if any element of the violation occurs before
15 that date.

16 SECTION 29. The importance of this legislation and the
17 crowded condition of the calendars in both houses create an
18 emergency and an imperative public necessity that the
19 constitutional rule requiring bills to be read on three several
20 days in each house be suspended, and this rule is hereby suspended.

1953 MAY 16 AM 11:00
HOUSE OF REPRESENTATIVES

ENGROSSED
THIRD READING

By Craddick

H.B. No. 1585

A BILL TO BE ENTITLED

AN ACT

relating to the jurisdiction, powers, and duties of and the enforcement by the Texas Department of Water Resources; providing criminal offenses; and providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Sections 11.132, 11.173, 16.052, and 50.372, Water Code, are amended to read as follows:

Sec. 11.132. NOTICE [~~OF--HEARING~~]. (a) Notice shall be given to the persons who in the judgment of the commission may be affected by an application, including those persons listed in Subdivision (2), Subsection (d), of this section. The commission, on the motion of a commissioner or on the request of the executive director or any affected person, shall hold a public hearing on the application. [~~The-commission-shall-give-notice-of-the--hearing--on-the-application-as-prescribed-by-this-section-~~

[~~(b)--In-the-notice,-the-commission-shall-~~

[~~(1)--state-the-name-and-address-of-the-applicant,~~

[~~(2)--state-the-date-the-application-was-filed,~~

[~~(3)--state--the--purpose--and--extent--of-the-proposed appropriation-of-water,~~

[~~(4)--identify-the-source-of-supply-and-the-place-where the-water-is-to-be-stored-or-taken-or-diverted-from-the--source--of supply,~~

[~~(5)--specify-the-time-and-place-of-the-hearing,-and~~

1 ~~[(6) --give--any--additional--information--the--commission~~
2 ~~considers-necessary-]~~

3 **(b)** ~~[(e)]~~ If the proposed use is for irrigation, the
4 commission shall include in the notice a general description of the
5 location and area of the land to be irrigated.

6 **(c)** In the notice, the commission shall:

7 **(1)** state the name and address of the applicant;

8 **(2)** state the date the application was filed;

9 **(3)** state the purpose and extent of the proposed
10 appropriation of water;

11 **(4)** identify the source of supply and the place where
12 the water is to be stored or taken or diverted from the source of
13 supply;

14 **(5)** specify the time and location where the commission
15 will consider the application; and

16 **(6)** give any additional information the commission
17 considers necessary.

18 **(d)** The commission may act on the application without
19 holding a public hearing if all of the following conditions are
20 met:

21 **(1)** not less than 30 days before the date of action on
22 the application by the commission, the applicant has published the
23 commission's notice of the application at least once in a newspaper
24 regularly published or circulated within the section of the state
25 where the source of water is located;

26 **(2)** not less than 30 days before the date of action on
27 the application by the commission, the commission mails a copy of

1 the notice by first-class mail, postage prepaid, to:

2 (A) each claimant or appropriator of water from
3 the source of water supply, the record of whose claim or
4 appropriation has been filed in the department; and

5 (B) all navigation districts within the river
6 basin concerned; and

7 (3) within 30 days after the date of the newspaper
8 publication of the commission's notice, a public hearing has not
9 been requested in writing by a commissioner, the executive
10 director, or an affected person who objects to the application.

11 (e) The inadvertent failure of the commission to mail a
12 notice under Subdivision (2), Subsection (d), of this section to a
13 navigation district that is not a claimant or appropriator of water
14 may not prevent the commission's consideration of the application.

15 (f) If, on the date specified in the notice prescribed by
16 Subsection (c) of this section, the commission determines that a
17 public hearing must be held, the matter shall be remanded for
18 hearing without the necessity of issuing further notice other than
19 advising all parties of the time and place where the hearing is to
20 convene. [The notice shall be published once a week for two
21 consecutive weeks before the date stated in the notice for the
22 hearing in some newspaper having a general circulation in the
23 section of the state where the source of water is located.

24 [(e) -- The commission shall also mail a copy of the notice by
25 first-class mail, postage prepaid, to each claimant or appropriator
26 of water from the source of water supply, the record of whose claim
27 or appropriation has been filed in the office of the commission.

1 The--notice--shall--also--be--mailed--by--first-class-mail,-postage
2 prepaid,--to--all--navigation--districts---within---the---watershed
3 concerned.---The--inadvertent--failure--of-the-commission-to-mail-a
4 notice-to--a--navigation--district--which--is--not--a--claimant--or
5 appropriator---of--water--does--not--prevent--the--hearing--on--the
6 application-

7 [(f) --The-notice-shall-be-mailed-and-first-published-not-less
8 than-20-days-before-the-date-set-for-the-hearing-]

9 Sec. 11.173. CANCELLATION IN WHOLE. (a) If no part of the
10 water authorized to be appropriated under a permit, certified
11 filing, or certificate of adjudication has been put to beneficial
12 use at any time during the 10-year period immediately preceding the
13 cancellation proceedings authorized by this subchapter, then the
14 appropriation is presumed to have been wilfully abandoned, and the
15 permit, certified filing, or certificate of adjudication is subject
16 to cancellation in whole as provided by this subchapter.

17 (b) Cancellation proceedings for failure to utilize water
18 under a permit for which time limitations for commencement and
19 completion of construction have been set by the commission under
20 Section 11.145 of this code and for which construction has not
21 begun or been completed shall be brought under Section 11.146 of
22 this code, and not under this subchapter.

23 Sec. 16.052. INTERBASIN WATER TRANSFER. The executive
24 director shall not prepare or formulate a plan which contemplates
25 or results in the removal of state [surface] water from the river
26 basin of origin and its adjoining coastal basins if the water
27 supply involved will be required for reasonably foreseeable water

supply requirements within the river basin of origin and its
adjoining coastal basins during the next ensuing 50-year period,
except on a temporary, interim basis.

Sec. 50.372. FORM OF AUDIT. (a) All audits required by
Subsection (a), Section 50.371, of this code shall be performed
according to the generally accepted auditing standards of the
American Institute of Certified Public Accountants.

(b) The audit report shall include the audited financial
statements presented in conformity with the American Institute of
Certified Public Accountants' generally accepted accounting
principles and the independent auditor's opinion regarding those
financial statements.

(c) The executive director shall adopt an accounting and
auditing manual to be used by districts to comply with Subsection
(a), Section 50.371, of this code.

(d) If any part of the manual is inconsistent with the
American Institute of Certified Public Accountants' generally
accepted auditing standards or generally accepted accounting
principles, the American Institute of Certified Public Accountants'
standards and principles prevail. [The-executive-director-shall
adept-an-accounting-and-auditing-manual, and--except--as--otherwise
provided--by--this-manual,--the-audit-shall-be-performed-according-to
the-generally-accepted-auditing-standards-adopted-by--the--American
Institute--of-Certified-Public-Accountants,--hereinafter-referred-to
as-generally-accepted-auditing-standards,--and--shall--include--the
auditor's--representation--that--the-financial-statements-have-been
prepared--in--accordance---with---generally---accepted---accounting

1 principles-as-adopted-by-the-American-Institute-of-Certified-Public
2 Accountants,---hereinafter---referred---to---as---generally---accepted
3 accounting-principles-]

4 SECTION 2. (a) Section 26.122, Water Code (the text of
5 which was to be effective until delegation of NPDES permit
6 authority), is amended to read as follows:

7 Sec. 26.122. CIVIL PENALTY. A person who violates any
8 provision of this chapter or any rule, permit, or order of the
9 department is subject to a civil penalty of not less than \$100
10 [~~\$50~~] nor more than \$10,000 [~~\$1,000~~] for each act of violation and
11 for each day of violation to be recovered as provided in this
12 subchapter.

13 (b) The delegation of NPDES permit authority does not affect
14 Section 26.122, Water Code, as amended by Subsection (a) of this
15 section.

16 SECTION 3. Section 11.085, Water Code, is amended to read as
17 follows:

18 Sec. 11.085. INTERWATERSHED AND INTERBASIN TRANSFERS. (a)
19 No person may take or divert any of the water of the ordinary flow,
20 underflow, or storm flow of any stream, watercourse, or watershed
21 in this state into any other natural stream, watercourse, or
22 watershed to the prejudice of any person or property situated
23 within the watershed from which the water is proposed to be taken
24 or diverted.

25 (b) No person may transfer state water beyond the river
26 basin of origin and its adjoining coastal basins [~~from--one~~
27 ~~watershed--to--another~~] without first applying for and receiving a

1 permit from the commission to do so. Before issuing such a
2 permit, the commission shall hold a hearing to determine the rights
3 that might be affected by the transfer. The commission shall give
4 notice and hold the hearing in the manner prescribed by its
5 procedural rules.

6 (c) A person who takes or diverts water in violation of this
7 section is guilty of a misdemeanor and upon conviction is
8 punishable by a fine of not less than \$100 nor more than \$500 or by
9 confinement in the county jail for not more than six months.

10 (d) A person commits a separate offense each day he
11 continues to take or divert water in violation of this section.

12 SECTION 4. Subsection (a), Section 11.134, Water Code, is
13 amended to read as follows:

14 (a) After consideration of the application is complete [~~the~~
15 ~~hearing~~], the commission shall make a written decision granting or
16 denying the application. The application may be granted or denied
17 in whole or in part, and, if granted, may be for a specified term
18 of years.

19 SECTION 5. Subsections (d) and (f), Section 11.143, Water
20 Code, are amended to read as follows:

21 (d) Except as otherwise specifically provided by this
22 subsection, before [~~Befere~~] the commission may approve the
23 application and issue the permit, it shall give notice and hold a
24 hearing as prescribed by this section. The commission may act on
25 the application without holding a public hearing if all of the
26 following conditions are met:

27 (1) not less than 30 days before the date of action on

1 the application by the commission, the applicant has published the
 2 commission's notice of the application at least once in a newspaper
 3 regularly published or circulated within the section of the state
 4 where the source of water is located;

5 (2) not less than 30 days before the date of action on
 6 the application by the commission, the commission mails a copy of
 7 the notice by first-class mail, postage prepaid, to each person
 8 whose claim or appropriation has been filed with the department and
 9 whose diversion point is downstream from that described in the
 10 application; and

11 (3) within 30 days after the date of the newspaper
 12 publication of the commission's notice, a public hearing is not
 13 requested in writing by a commissioner, the executive director, or
 14 an affected person who objects to the application.

15 (f) If on the date specified in the notice prescribed by
 16 Subsection (d) of this section, the commission determines that a
 17 public hearing must be held, the matter shall be remanded for
 18 hearing without the necessity of issuing further notice other than
 19 advising all parties of the time and place where the hearing is to
 20 convene. [The--notice--shall--be--published--only--once,--at--least--20
 21 days--before--the--date--stated--in--the--notice--for--the--hearing--on--the
 22 application,--in--a--newspaper--having--general--circulation--in--the
 23 county--where--the--dam--or--reservoir--is--located,--At--least--15--days
 24 before--the--date--set--for--the--hearing,--the--commission--shall--transmit
 25 a--copy--of--the--notice--by--first--class--mail--to--each--person--whose--claim
 26 or--appropriation--has--been--filed--with--the--department--and--whose
 27 diversion--point--is--downstream--from--that--described--in--the

1 application.]

2 SECTION 6. Subsection (b), Section 12.113, Water Code, is
3 amended to read as follows:

4 (b) The department shall deposit all costs collected under
5 Subchapter G [F], Chapter 11 of this code in the State Treasury to
6 the credit of the water rights administration fund, from which the
7 department shall pay all expenses necessary to efficiently
8 administer and perform the duties described in Sections 11.325
9 through 11.335 of this code.

10 SECTION 7. Section 15.104, Water Code, is amended to read as
11 follows:

12 Sec. 15.104. CERTIFICATE OF EXECUTIVE DIRECTOR [~~COMMISSION~~]
13 OR APPROVAL BY EXECUTIVE DIRECTOR [~~COMMISSION~~]. (a) Except as
14 provided by Subsection (b) of this section, the board shall not
15 deliver funds pursuant to an application for financial assistance
16 from the loan fund until the executive director has furnished the
17 board written evidence [~~political--subdivision-has-furnished-the~~
18 ~~board-a-resolution-adopted-by-the-commission~~] certifying:

19 (1) that an applicant proposing surface-water
20 development has the necessary water right authorizing it to
21 appropriate and use the water that the project will provide; or

22 (2) that an applicant proposing underground water
23 development has the right to use water that the project will
24 provide.

25 (b) If an applicant includes a proposal for a waste water
26 treatment plant, [~~the-part-of-the-application-relating-to-the-waste~~
27 ~~water--treatment--plant--does--not--need--to--be--certified--by-the~~

1 ~~commission, but~~] the board may not deliver funds for the waste
2 water treatment plant until the political subdivision has obtained
3 written evidence of approval of the plans for the waste water
4 treatment plant from the executive director.

5 SECTION 8. Section 17.123, Water Code, is amended to read as
6 follows:

7 Sec. 17.123. CERTIFICATE OF EXECUTIVE DIRECTOR [~~COMMISSION~~]
8 OR APPROVAL BY EXECUTIVE DIRECTOR [~~COMMISSION~~]. (a) Except as
9 provided in Subsection (b) of this section, the board shall not
10 deliver funds pursuant to an application for financial assistance
11 until the executive director has furnished the board written
12 evidence [~~political--subdivision--has--furnished---the---board---a~~
13 ~~resolution-adopted-by-the-commission~~] certifying:

14 (1) that an applicant proposing surface-water
15 development has the necessary water right authorizing it to
16 appropriate and use the water which the project will provide; or

17 (2) that an applicant proposing underground water
18 development has the right to use water that the project will
19 provide.

20 (b) If an application includes a proposal for a waste water
21 treatment plant, [~~the-part-of-the-application-relating-to-the-waste~~
22 ~~water-treatment--plant--does--not--need--to--be--certified--by--the~~
23 ~~commission, but~~] the board may not deliver funds for the waste
24 water treatment plant until the political subdivision has obtained
25 written evidence of approval of the plans for the waste water
26 treatment plant from the executive director.

27 SECTION 9. Subsection (a), Section 26.022, Water Code, is

1 amended to read as follows:

2 (a) Except as otherwise provided in Sections 26.0191,
3 26.028, and 26.176 of this code, the provisions of this section
4 apply to all hearings conducted in compliance with this chapter.

5 SECTION 10. (a) Section 26.123, Water Code (the text of
6 which was to be effective until delegation of NPDES permit
7 authority), is amended to read as follows:

8 Sec. 26.123. ENFORCEMENT BY DEPARTMENT. (a) Whenever it
9 appears that a person has violated or is violating or is
10 threatening to violate any provision of this chapter or any rule,
11 permit, or order of the department, then the executive director may
12 have a civil suit instituted in a district court for injunctive
13 relief to restrain the person from continuing the violation or
14 threat of violation, or for the assessment and recovery of a civil
15 penalty of not less than \$100 [~~\$50~~] nor more than \$10,000 [~~\$1,000~~]
16 for each act of violation and for each day of violation, or for
17 both injunctive relief and civil penalty.

18 (b) On application for injunctive relief and a finding that
19 a person is violating or threatening to violate any provision of
20 this chapter or any rule, permit, or order of the department, the
21 district court shall grant the injunctive relief the facts may
22 warrant.

23 (c) At the request of the executive director, the attorney
24 general shall institute and conduct a suit in the name of the State
25 of Texas for injunctive relief or to recover the civil penalty or
26 for both injunctive relief and penalty as authorized in Subsection
27 (a) of this section.

1 (b) The delegation of NPDES permit authority does not affect
2 Section 26.123, Water Code, as amended by Subsection (a) of this
3 section.

4 SECTION 11. Subdivision (3), Section 26.211, Water Code, is
5 amended to read as follows:

6 (3) "Person" means an individual, ~~[or]~~ private
7 corporation, organization, government or governmental subdivision
8 or agency, business trust, partnership, association, or any other
9 legal entity.

10 SECTION 12. Subsection (c), Section 26.303, Water Code, is
11 amended to read as follows:

12 (c) If the department enters into a contract or cooperative
13 agreement under Section 104(c)(3) of the environmental response
-14 law, the board may ~~[shall]~~ include in the contract or agreement
15 terms and conditions:

16 (1) to assure future maintenance of the removal and
17 remedial actions provided for the expected life of those actions as
18 determined by the federal government;

19 (2) to assure the availability of a hazardous waste
20 disposal facility acceptable to the federal government that
21 complies with Subtitle C of the federal Solid Waste Disposal Act
22 (42 U.S.C. 6921 et seq.) for any necessary off-site storage,
23 destruction, treatment, or secure disposition of the hazardous
24 substances, pollutants, or contaminants; and

25 (3) to assure payment by the state of:

26 (A) 10 percent of the costs of the removal and
27 remedial actions, including future maintenance; or

1 (B) at least 50 percent or more of the costs as
2 determined appropriate by the federal government, taking into
3 account the degree of responsibility of the state for any amount
4 spent in response to a release at a disposal facility that was
5 owned by the state at the time of disposal of hazardous substances
6 at the disposal facility.

7 SECTION 13. Subsection (b), Section 26.304, Water Code, is
8 amended to read as follows:

9 (b) The fund shall include money appropriated to it by the
10 legislature, [and] any [other] money received for this purpose by
11 the department from the federal government, and all money recovered
12 by the state under Section 26.308 of this code.

13 SECTION 14. Subsections (a) and (d), Section 50.371, Water
14 Code, are amended to read as follows:

15 (a) The governing board of each district created under the
16 general law or by special act of the legislature has the overall
17 responsibility to adopt sound accounting policies, prepare reliable
18 financial statements, and at the expense of the district, engage an
19 independent auditor before the end of the fiscal year for an annual
20 audit of the district's fiscal accounts and records [~~shall-have-the~~
21 ~~district's--fiscal--accounts--and--records--audited-annually-at-the~~
22 ~~expense-of-the-district~~].

23 (d) The governing board of each district shall assure that
24 the [The] audit required by this section shall be completed within
25 120 days after the close of the district's fiscal year, except for
26 districts audited by the state auditor; district audits by the
27 state auditor shall be completed within 12 months of the close of

1 the district's fiscal year.

2 SECTION 15. Subsections (a), (b), and (c), Section 50.374,
3 Water Code, are amended to read as follows:

4 (a) After the governing board of the district has approved
5 the audit, it shall submit a copy of the report including a
6 certificate indicating the governing board's approval of the
7 report. The certificate must be in the format prescribed by the
8 executive director. The governing board shall submit the report to
9 the executive director for filing within 135 days after the close
10 of the district's fiscal year unless the audit is performed by the
11 state auditor, in which case it will be filed in accordance with
12 Section 50.104 of this code.

13 (b) If the governing board of the district refuses to
14 approve the annual audit report, the governing board shall submit a
15 copy of the report, including a certificate that indicates the
16 governing board's disapproval of the report and reasons for that
17 disapproval. The certificate must be in the format prescribed by
18 the executive director. The governing board shall submit the
19 report to the executive director for filing within 135 days after
20 the close of the district's fiscal year, except as specified in
21 Subsection (a) of this section[~~7-accompanied-by--a--statement--from~~
22 ~~the--board--explaining--the--reasons-for-its-failure-to-approve-the~~
23 ~~report~~].

24 (c) Copies of the audit or the annual financial dormancy
25 affidavit or annual financial report described in Sections 50.377
26 and 50.378 of this code shall be filed annually in the office of
27 the district and with the city secretary or other designated city

1 official in whose extraterritorial jurisdiction the district is
 2 located. If the district is not located within the
 3 extraterritorial jurisdiction of a city, the audit, annual
 4 financial dormancy affidavit, or annual financial report shall be
 5 filed annually with the clerk of each [the] county within which the
 6 district is located[~~,-provided,-however,-this-subsection-shall--not~~
 7 ~~apply--to-any-district-which-is-located-within-all-or-parts-of-more~~
 8 ~~than-two-counties,-however,-each-such-district-shall-file-a-copy-of~~
 9 ~~its-annual-audit,-annual-financial-dormancy--affidavit,-or--annual~~
 10 ~~financial--report--with-the-county-clerk-of-the-county-within-which~~
 11 ~~the-greater-part-of-the-district-resides]~~.

12 SECTION 16. Subsection (a), Section 50.377, Water Code, is
 13 amended to read as follows:

14 (a) Those districts which can satisfy all [the] criteria
 15 contained in this section are defined as financially dormant and
 16 may elect to submit to the executive director for filing a
 17 financial dormancy affidavit in lieu of compliance with Section
 18 50.371 of this code:

19 (1) the district had \$500 or less [no] revenue from
 20 operations, tax assessments, or any other sources during the
 21 calendar year;

22 (2) the district had \$500 or less [no] expenditures of
 23 funds during the calendar year; [and]

24 (3) the district had no bonds or any other liabilities
 25 outstanding during the calendar year; and

26 (4) the district had no cash or investments in excess
 27 of \$500 at any time during the calendar year.

SECTION 17. Subsection (a), Section 50.378, Water Code, is amended to read as follows:

(a) A district may elect to file annual financial reports with the executive director and the other governmental entities prescribed by Subsection (c) of Section 50.374 of this code in lieu of the district's compliance with Section 50.371 of this code provided:

(1) the district had no bonds or other long-term (more than one year) liabilities outstanding during the fiscal period;

(2) the district did not have gross revenues in excess of \$20,000 [~~\$5,000~~] during the fiscal period; and

(3) the district's cash[~~receivables~~] and temporary investments were not in excess of \$50,000 at any time [~~\$20,000~~] during the fiscal period.

SECTION 18. Subsection (e), Section 4, Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes), is amended to read as follows:

(e) Except as provided in Subsection (f) of this section with respect to certain industrial solid wastes, each state agency has the power to require and issue permits authorizing and governing the construction, operation, and maintenance of solid waste facilities used for the storage, processing, or disposal of solid waste. This power may be exercised by a state agency only with respect to the solid waste over which it has jurisdiction under this Act. If this power is exercised by a state agency, that state agency shall prescribe the form of and reasonable requirements for the permit application and the procedures to be

1 followed in processing the application, to the extent not otherwise
2 provided for in this subsection. The following additional
3 provisions apply if a state agency exercises the power authorized
4 in this subsection.[-]

5 (1) The state agency to whom the permit application is
6 submitted shall mail a copy of the application or a summary of its
7 contents to the Texas Air Control Board, to the other state agency,
8 to the mayor and health authorities of any city or town within
9 whose territorial limits or extraterritorial jurisdiction the solid
10 waste facility is located, and to the county judge and health
11 authorities of the county in which the facility is located. The
12 governmental entities to whom the information is mailed shall have
13 a reasonable time, as prescribed by the state agency to whom the
14 application was originally submitted, to present comments and
15 recommendations on the permit application before that state agency
16 acts on the application.

17 (2) A separate permit shall be issued for each solid waste
18 facility. The permit shall include the names and addresses of the
19 person or persons who own the land where the solid waste facility
20 is located and the person who is or will be the operator or person
21 in charge of the facility; a legal description of the land on which
22 the facility is located; and the terms and conditions on which the
23 permit is issued, including the duration of the permit. The state
24 agency in its discretion shall have the power to process a permit
25 application for purpose of determining land use compatibility
26 alone, and at another time, if the site location is acceptable,
27 consider technical matters related to the application. Where this

1 power is exercised, a public hearing may be held for each
2 determination in accordance with Paragraph (4) of this Subsection
3 (e).

4 (3) The state agency may amend, extend, or renew any permit
5 it issues in accordance with reasonable procedures prescribed by
6 the state agency. The procedures prescribed in Paragraph (1) of
7 this Subsection (e) for permit applications apply also to
8 applications to amend, extend, or renew a permit.

9 (4) Before a permit is issued, amended, extended, or
10 renewed, the state agency to which the application is submitted
11 shall provide an opportunity for a hearing to the applicant and
12 persons affected; the state agency may also hold such a hearing
13 upon its own motion. The state agency by rule shall establish
14 procedures for public notice and any public hearing authorized
15 under this paragraph. A hearing on a permit involving a solid
16 waste facility for hazardous industrial solid waste must include
17 one session held in the county in which the solid waste facility is
18 located. Hearings under this paragraph shall be conducted in
19 accordance with the hearing rules adopted by the state agency and
20 the applicable provisions of the Administrative Procedure and Texas
21 Register Act, as amended (Article 6252-13a, Vernon's Texas Civil
22 Statutes).

23 (5) Before a permit is issued, amended, extended, or
24 renewed, the state agency to which the application is submitted may
25 require the permittee to execute a bond or give other financial
26 assurance conditioned on the permittee's satisfactorily operating
27 and closing the solid waste facility. The state agency to which

1 the application is submitted shall require an assurance of
 2 financial responsibility as may be necessary or desirable
 3 consistent with the degree and duration of risks associated with
 4 the processing, storage, or disposal of specified solid waste.
 5 Financial requirements established by the state agency shall at a
 6 minimum be consistent with the federal requirements established
 7 under the federal Solid Waste Disposal Act, as amended by the
 8 Resource Conservation and Recovery Act of 1976, 42 U.S.C., 6901 et
 9 seq., as amended.

10 (6) If a permit is issued, amended, renewed, or extended by
 11 a state agency in accordance with this Subsection (e), the owner or
 12 operator of the solid waste facility does not need to obtain a
 13 license for the same facility from a county, or from a political
 14 subdivision exercising the authority granted in Section 6 of this
 15 Act.

16 (7) A permit issued under this Act is issued only to the
 17 person in whose name the application is made and is issued only for
 18 the facility described in the permit. A permit may not be
 19 transferred without prior written notice to and prior written
 20 approval by the state agency which issued it.

21 (8) The state agency has the authority, for good cause, to
 22 revoke or amend any permit it issues for reasons pertaining to
 23 public health, air or water pollution, land use, or violation of
 24 this Act or of any other applicable laws or rules controlling the
 25 management of solid waste. The state agency using this authority
 26 shall notify the governmental entities named in Paragraph (1) of
 27 this Subsection (e) and provide an opportunity for a hearing to the

1 permittee and persons affected. The state agency may hold such a
 2 hearing upon its own motion. The state agency by rule shall
 3 establish procedures for public notice and any public hearing
 4 authorized under this paragraph. Hearings under this paragraph
 5 shall be conducted in accordance with the hearing rules adopted by
 6 the state agency and the applicable provisions of the
 7 Administrative Procedure and Texas Register Act, as amended
 8 (Article 6252-13a, Vernon's Texas Civil Statutes).

9 (9) Manufacturing and processing establishments, commonly
 10 known as rendering plants, which process for any purpose waste
 11 materials originating from animals, poultry, and fish (all
 12 hereinafter referred to as "animals") and materials of vegetable
 13 origin, including without limitation animal parts and scraps,
 14 offal, paunch manure, and waste cooking grease of animal and
 15 vegetable origin are subject to regulation under the industrial
 16 solid waste provisions of this Act and may also be regulated under
 17 Chapter 26, Water Code. When a rendering establishment is owned by
 18 a person who operates the rendering establishment as an integral
 19 part of an establishment engaged in manufacturing or processing for
 20 animal or human consumption food derived wholly or in part from
 21 dead, slaughtered, or processed animals, poultry, or fish, the
 22 combined business may operate under authority of a single permit
 23 issued pursuant to Chapter 26, Water Code. The provisions of this
 24 subsection do not apply to those rendering plants in operation and
 25 production on or before August 27, 1973.

26 (10) Each state agency may issue an emergency order, either
 27 mandatory or prohibitory in nature, regarding any activity of solid

1 waste management within its jurisdiction, whether such activity is
2 covered by a permit or not, if the state agency determines that the
3 activity is creating or will cause extensive or severe property
4 damage or economic loss to others or is posing an immediate and
5 serious threat to human life or health and that other procedures
6 available to the state agency to remedy or prevent the occurrence
7 of the situation will result in unreasonable delay. The order may
8 be issued without notice and hearing, or with such notice and
9 hearing as the state agency deems practicable under the
10 circumstances.

11 (i) If an emergency order is issued under this authority
12 without a hearing, the issuing agency shall fix a time and place
13 for a hearing to be held in accordance with the departmental rules
14 by the state agency, so as to affirm, modify, or set aside the
15 emergency order.

16 (ii) The requirements of Paragraph (4) of this subsection
17 relating to public notice do not apply to such a hearing, but such
18 general notice of the hearing shall be given in accordance with the
19 departmental rules of the state agency.

20 SECTION 19. Subsection (a), Section 5, Solid Waste Disposal
21 Act (Article 4477-7, Vernon's Texas Civil Statutes), is amended to
22 read as follows:

23 (a) Every county has the solid waste management powers which
24 are enumerated in this Section 5. However, the exercise of the
25 licensing authority and other powers granted to counties by this
26 Act does not preclude the department or the department of water
27 resources from exercising any of the powers vested in the

department or the department of water resources under other provisions of this Act, including specifically the provisions authorizing the department and the department of water resources to issue permits for the construction, operation, and maintenance of facilities for the processing, storage, or disposal of solid waste. The powers specified in Subsections (d) and (e) of this section and Section 18 of the County Solid Waste Control Act (Article 4477-8, Vernon's Texas Civil Statutes) may not be exercised by a county with respect to the industrial solid waste disposal practices and areas to which Subsection (f) of Section 4 of this Act applies. The department or the department of water resources, by specific action or directive, may supersede any authority or power granted to or exercised by a county under this Act, but only with respect to those matters which are, under this Act, within the jurisdiction of the state agency acting.

SECTION 20. Subdivision (6), Subsection (a), Section 8, Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes), is amended to read as follows:

(6) A suit for injunctive relief or for recovery of a civil penalty, or for both injunctive relief and penalty, may be brought either in the county where the defendant resides or in the county where the violation or threat of violation occurs. In any suit brought to enjoin a violation or threat of violation of this Act or of any rule, permit, license or other order of the department of water resources, the department, a county, or a political subdivision exercising the authority granted in Section 6 of this Act, the court may grant the governmental entity bringing the suit,

1 without bond or other undertaking, any prohibitory or mandatory
2 injunction the facts may warrant, including temporary restraining
3 orders [~~after--notice--and--hearing~~], temporary injunctions, and
4 permanent injunctions.

5 SECTION 21. Chapter 5, Water Code, is amended by adding
6 Section 5.358 to read as follows:

7 Sec. 5.358. LIABILITY OF DEPARTMENT. The department,
8 including the board, commission, and executive director, and its
9 employees and agents are not liable for any damages that may occur,
10 in whole or in part, as a result of acts done or omitted, any
11 decision made, or policy made or followed in a good faith effort to
12 carry out this code and other laws of this state.

13 SECTION 22. Chapter 11, Water Code, is amended by adding
14 Section 11.1221 to read as follows:

15 Sec. 11.1221. SECONDARY USE AUTHORIZATION REQUIRED. Any
16 reuse of state water for purposes other than those authorized by
17 the water right may be made only if authorized by the commission
18 through the granting of a water right or amendment to a water
19 right.

20 SECTION 23. Section 26.028, Water Code, is amended by adding
21 Subsections (e) and (f) to read as follows:

22 (e) In the notice prescribed by Subsection (a) of this
23 section, the commission shall:

- 24 (1) state the name and address of the applicant;
25 (2) state the location of the applicant's facilities
26 or operations;
27 (3) identify the nature of the application;

1 (4) specify the time and location where the commission
2 will consider the application; and

3 (5) give any additional information the commission
4 considers necessary.

5 (f) If, on the date specified in the notice prescribed by
6 Subsection (e) of this section, the commission determines that a
7 public hearing must be held, the matter shall be remanded for
8 hearing without the necessity of issuing further notice other than
9 advising all parties of the time and place where the hearing is to
10 convene.

11 SECTION 24. Section 26.212, Water Code (the text of which is
12 effective until delegation of NPDES Authority), is amended by
13 adding Subsection (c) to read as follows:

14 (c) No person may knowingly make any false statement,
15 representation, or certification in any application, notice,
16 record, report, plan, or other document filed or required to be
17 maintained under this chapter, or under any rule, permit, or other
18 order of the department.

19 SECTION 25. Chapter 26, Water Code, is amended by adding
20 Section 26.308 to read as follows:

21 Sec. 26.308. LIABILITY AND STATE RECOVERY OF COSTS. (a) As
22 used in this section, "owner," "operator," "disposal," "transport,"
23 "national contingency plan," and "natural resources" have the
24 meanings provided by the environmental response law.

25 (b) Notwithstanding any other law, and subject to the
26 defenses provided by Section 107(b) of the environmental response
27 law, any person listed in Subsection (c) of this section shall be

1 liable for:

2 (1) all costs of removal or remedial action incurred
3 by this state that are not inconsistent with the national
4 contingency plan; and

5 (2) damages for injury to, destruction of, or loss of
6 natural resources, including the reasonable costs of assessing that
7 injury, destruction, or loss resulting from the release.

8 (c) The persons who are liable under Subsection (b) of this
9 section are:

10 (1) an owner or operator of a disposal facility from
11 which there is a release or a threatened release of a hazardous
12 substance that causes the occurrence of response costs;

13 (2) a person who at the time of disposal of a
14 hazardous substance owned or operated a disposal facility at which
15 those hazardous substances were disposed of and from which there is
16 a release, or a threatened release of a hazardous substance that
17 causes the occurrence of response costs;

18 (3) a person who, by contract, agreement, or
19 otherwise, arranged with a transporter for transport for disposal
20 or treatment of hazardous substances owned or possessed by that
21 person, or by any other party or entity, at any disposal facility
22 owned or operated by another party or entity and containing such
23 hazardous substances, from which there is a release or a threatened
24 release of a hazardous substance that causes the occurrence of
25 response costs; and

26 (4) any person who accepts or accepted any hazardous
27 substances for transport to disposal or treatment facilities or

1 sites selected by that person from which there is a release or
 2 threatened release of a hazardous substance that causes the
 3 occurrence of response costs.

4 (d) The executive director may request that the attorney
 5 general institute a suit in a district court in Travis County
 6 against a person listed in Subsection (c) of this section to
 7 recover the state's costs and damages under Subsection (b) of this
 8 section.

9 (e) At the request of the executive director, the attorney
 10 general shall institute and conduct a suit in the name of the State
 11 of Texas to recover the state's costs and damages under Subsection
 12 (b) of this section.

13 SECTION 26. Section 26.122, Water Code (the text of which
 14 was to take effect on delegation of NPDES permit authority), as
 15 follows, is repealed:

16 ~~[Sec. 26.122. --CIVIL-PENALTY. --(a)--A-person-who-violates-any~~
 17 ~~provision-of-this-chapter,--other-than-Subsection-(d)-or--Subsection~~
 18 ~~(e)--of--Section-21.251,--or-who-violates-any-rule,--permit,--or-order~~
 19 ~~of-the-department-is-subject-to-a-civil-penalty-of--not--less--than~~
 20 ~~\$50--nor-more-than-\$1,000--for-each-act-of-violation-and-for-each-day~~
 21 ~~of-violation-to-be-recovered-as-provided-in-this-subchapter.~~

22 ~~[(b)--A--person-who-violates-Subsection-(d)-or-Subsection-(e)~~
 23 ~~of-Section-21.251-of-this-chapter-is-subject-to-a-civil-penalty--of~~
 24 ~~not-more-than-\$10,000--for-each-act-of-violation-and-for-each-day-of~~
 25 ~~violation,---to--be--recovered--as--provided--in--this--subchapter,~~
 26 ~~provided,--however,--that--in--suits--instituted--pursuant--to--this~~
 27 ~~subsection,--the-civil-penalty,--if-any,--assessed-against-the-person~~

1 who-committed-or-who-is-committing-the-violation-shall-be--no--more
 2 than-\$1,000-for-each-act-of-violation-and-for-each-day-of-violation
 3 where--the--violation-is-of-a-limitation-or-condition-included-in-a
 4 permit--issued--by--the--department--prior--to--delegation--by--the
 5 Administrator--of-the-United-States-Environmental-Protection-Agency
 6 of-NPDES-permit-authority-under-Section-402 (b)-of-the-Federal-Water
 7 Pollution-Control-Act,-or-of-any-limitation-or--condition--included
 8 in--an--identified-state-supplement-to-an-NPDES-permit-issued-after
 9 NPDES-permit-delegation-by-the-Administrator-of-the--United--States
 10 Environmental-Protection-Agency.]

11 SECTION 27. Section 26.123, Water Code (the text of which
 12 was to take effect on delegation of NPDES permit authority), as
 13 follows, is repealed:

14 [Sec. 26.123. --ENFORCEMENT--BY--DEPARTMENT-- (a)--Whenever-it
 15 appears--that--a--person--has--violated--or--is--violating--or--is
 16 threatening--to--violate--any-provision-of-this-chapter,-other-than
 17 Subsection- (d)-or-Subsection- (e)-of-Section-21.251,-or-has-violated
 18 or-is-violating,-or-is-threatening-to-violate,-any-rule,-permit,-or
 19 order-of-the-department,-then-the-executive--director--may--have--a
 20 civil--suit-instituted-in-a-district-court-for-injunctive-relief-to
 21 restrain-the-person-from-continuing--the--violation--or--threat--of
 22 violation,-or-for-the-assessment-and-recovery-of-a-civil-penalty-of
 23 not--less--than--\$50-nor-more-than-\$1,000-for-each-act-of-violation
 24 and-for-each-day-of-violation,-or-for-both--injunctive--relief--and
 25 civil-penalty.

26 [(b)--Whenever--it--appears--that-a-person-has-violated-or-is
 27 violating,-or--is--threatening--to--violate,-Subchapter-- (d)---or

Subchapter--(e)--of--Section--21.251--of--this--chapter,--then--the executive-director-may-have-a-civil-suit-instituted-in--a--district court--for-injunctive-relief-to-restrain-the-person-from-continuing the-violation-or-threat-of-violation,--or--for--the--assessment--and recovery--of--a-civil-penalty-of-not-more-than-\$10,000-for-each-act of-violation-and-for-each-day-of-violation,--or-for-both--injunctive relief---and--civil--penalty,--provided,--however,--that--in--suits instituted-pursuant-to-this-subsection,--the-civil-penalty,--if--any, assessed--against-the-person-who-committed-or-who-is-committing-the violation-shall-be-no-more-than-\$1,000-for-each--act--of--violation and--for--each--day--of--violation--where--the--violation--is--of-a limitation-or-condition-included-in-a-permit-issued--by--the--board prior--to--delegation--by--the--Administrator--of-the-United-States Environmental-Protection-Agency-of--NPDES--permit--authority--under Section--402(b)--of--the-Federal-Water-Pollution-Control-Act,--or-of any--limitation--or--condition--included--in--an--identified--state supplement--to-an-NPDES-permit-issued-after-NPDES-permit-delegation by-the-Administrator-of-the-United-States-Environmental--Protection Agency.

[(e) --On-application-for-injunctive-relief-and-a-finding-that a--person--is--violating-or-threatening-to-violate-any-provision-of this-chapter-or-any-rule,--permit,--or-order-of-the--department,--the district--court--shall--grant--the--injunctive-relief-the-facts-may warrant.

[(d) --At-the-request-of-the-executive-director,--the--attorney general-shall-institute-and-conduct-a-suit-in-the-name-of-the-State of--Texas--for-injunctive-relief-or-to-recover-the-civil-penalty-or

1 ~~for both injunctive relief and penalty as authorized in Subsection~~
2 ~~(a) or (b) of this section.]~~

3 SECTION 28. (a) This Act takes effect September 1, 1983,
4 and applies only to applications filed on or after that date.
5 Applications filed with the Texas Department of Water Resources
6 before September 1, 1983, are governed by the law that was in
7 effect at the time the application was filed, and that law is
8 continued in effect for that purpose.

9 (b) This Act applies only to a violation committed on or
10 after September 1, 1983. Violations committed before September 1,
11 1983, are subject to the laws that existed at the time the
12 violation occurred, and those laws are continued in effect for that
13 purpose. For the purpose of this Act, a violation occurs before
14 September 1, 1983, if any element of the violation occurs before
15 that date.

16 SECTION 29. The importance of this legislation and the
17 crowded condition of the calendars in both houses create an
18 emergency and an imperative public necessity that the
19 constitutional rule requiring bills to be read on three several
20 days in each house be suspended, and this rule is hereby suspended.

1 By: Craddick (Senate Sponsor - Howard) H.B. No. 1585
2 (In the Senate - Received from the House May 16, 1983;
3 May 17, 1983, read first time and referred to Committee on Natural
4 Resources; May 24, 1983, reported favorably, as amended; May 24,
5 1983, sent to printer.)

6 COMMITTEE AMENDMENT NO. 1

By: Brown

7 Amend HB 1585 by adding a new Section 26A to read as follows:
8 SECTION 26A. Section 11.142, Water Code is amended to read
9 as follows:

10 Sec. 11.142. ~~DOMESTIC---AND---LIVESTOCK---RESERVOIR~~ PERMIT
11 EXEMPTIONS. (a) Without obtaining a permit, a person may
12 construct on his own property a dam or reservoir to impound or
13 contain not more than 200 acre-feet of water for domestic and
14 livestock purposes.

15 (b) Without obtaining a permit, a person drilling and
16 producing petroleum and conducting operations associated with such
17 activity may take state water from the Gulf of Mexico and its
18 adjacent bays and arms not to exceed one acre-foot during any
19 24-hour period.

20 COMMITTEE AMENDMENT NO. 2

By: Truan

21 Amend H.B. 1585 by striking Section 21 and renumbering the
22 other sections accordingly.

23 A BILL TO BE ENTITLED
24 AN ACT

25 relating to the jurisdiction, powers, and duties of and the
26 enforcement by the Texas Department of Water Resources; providing
27 criminal offenses; and providing penalties.

28 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

29 SECTION 1. Sections 11.132, 11.173, 16.052, and 50.372,
30 Water Code, are amended to read as follows:

31 Sec. 11.132. NOTICE ~~[OF--HEARING]~~. (a) Notice shall be
32 given to the persons who in the judgment of the commission may be
33 affected by an application, including those persons listed in
34 Subdivision (2), Subsection (d), of this section. The commission,
35 on the motion of a commissioner or on the request of the executive
36 director or any affected person, shall hold a public hearing on the
37 application. ~~[The--commission--shall--give--notice--of--the--hearing--on--~~
38 ~~the--application--as--prescribed--by--this--section--~~

39 ~~[(b)--In--the--notice,--the--commission--shall--~~
40 ~~[(1)--state--the--name--and--address--of--the--applicant;~~
41 ~~[(2)--state--the--date--the--application--was--filed;~~
42 ~~[(3)--state--the--purpose--and--extent--of--the--proposed~~
43 ~~appropriation--of--water;~~
44 ~~[(4)--identify--the--source--of--supply--and--the--place--where~~
45 ~~the--water--is--to--be--stored--or--taken--or--diverted--from--the--source--of~~
46 ~~supply;~~

47 ~~[(5)--specify--the--time--and--place--of--the--hearing;--and~~
48 ~~[(6)--give--any--additional--information--the--commission~~
49 ~~considers--necessary--]~~

50 (b) ~~[(e)]~~ If the proposed use is for irrigation, the
51 commission shall include in the notice a general description of the
52 location and area of the land to be irrigated.

53 (c) In the notice, the commission shall:

54 (1) state the name and address of the applicant;
55 (2) state the date the application was filed;
56 (3) state the purpose and extent of the proposed
57 appropriation of water;
58 (4) identify the source of supply and the place where
59 the water is to be stored or taken or diverted from the source of
60 supply;

61 (5) specify the time and location where the commission
62 will consider the application; and

63 (6) give any additional information the commission
64 considers necessary.

65 (d) The commission may act on the application without

holding a public hearing if all of the following conditions are met:

(1) not less than 30 days before the date of action on the application by the commission, the applicant has published the commission's notice of the application at least once in a newspaper regularly published or circulated within the section of the state where the source of water is located;

(2) not less than 30 days before the date of action on the application by the commission, the commission mails a copy of the notice by first-class mail, postage prepaid, to:

(A) each claimant or appropriator of water from the source of water supply, the record of whose claim or appropriation has been filed in the department; and

(B) all navigation districts within the river basin concerned; and

(3) within 30 days after the date of the newspaper publication of the commission's notice, a public hearing has not been requested in writing by a commissioner, the executive director, or an affected person who objects to the application.

(e) The inadvertent failure of the commission to mail a notice under Subdivision (2), Subsection (d), of this section to a navigation district that is not a claimant or appropriator of water may not prevent the commission's consideration of the application.

(f) If, on the date specified in the notice prescribed by Subsection (c) of this section, the commission determines that a public hearing must be held, the matter shall be remanded for hearing without the necessity of issuing further notice other than advising all parties of the time and place where the hearing is to convene. ~~[The--notice--shall--be--published--once--a--week--for--two--consecutive--weeks--before--the--date--stated--in--the--notice--for--the--hearing--in--some--newspaper--having--a--general--circulation--in--the--section--of--the--state--where--the--source--of--water--is--located--]~~

~~[(e)--The--commission--shall--also--mail--a--copy--of--the--notice--by--first--class--mail--postage--prepaid--to--each--claimant--or--appropriator--of--water--from--the--source--of--water--supply--the--record--of--whose--claim--or--appropriation--has--been--filed--in--the--office--of--the--commission--The--notice--shall--also--be--mailed--by--first--class--mail--postage--prepaid--to--all--navigation--districts--within--the--watershed--concerned--The--inadvertent--failure--of--the--commission--to--mail--a--notice--to--a--navigation--district--which--is--not--a--claimant--or--appropriator--of--water--does--not--prevent--the--hearing--on--the--application--]~~

~~[(f)--The--notice--shall--be--mailed--and--first--published--not--less--than--20--days--before--the--date--set--for--the--hearing--]~~

Sec. 11.173. CANCELLATION IN WHOLE. (a) If no part of the water authorized to be appropriated under a permit, certified filing, or certificate of adjudication has been put to beneficial use at any time during the 10-year period immediately preceding the cancellation proceedings authorized by this subchapter, then the appropriation is presumed to have been wilfully abandoned, and the permit, certified filing, or certificate of adjudication is subject to cancellation in whole as provided by this subchapter.

(b) Cancellation proceedings for failure to utilize water under a permit for which time limitations for commencement and completion of construction have been set by the commission under Section 11.145 of this code and for which construction has not begun or been completed shall be brought under Section 11.146 of this code, and not under this subchapter.

Sec. 16.052. INTERBASIN WATER TRANSFER. The executive director shall not prepare or formulate a plan which contemplates or results in the removal of state [surface] water from the river basin of origin and its adjoining coastal basins if the water supply involved will be required for reasonably foreseeable water supply requirements within the river basin of origin and its adjoining coastal basins during the next ensuing 50-year period, except on a temporary, interim basis.

Sec. 50.372. FORM OF AUDIT. (a) All audits required by Subsection (a), Section 50.371, of this code shall be performed according to the generally accepted auditing standards of the American Institute of Certified Public Accountants.

(b) The audit report shall include the audited financial statements presented in conformity with the American Institute of Certified Public Accountants' generally accepted accounting principles and the independent auditor's opinion regarding those financial statements.

(c) The executive director shall adopt an accounting and auditing manual to be used by districts to comply with Subsection (a), Section 50.371, of this code.

(d) If any part of the manual is inconsistent with the American Institute of Certified Public Accountants' generally accepted auditing standards or generally accepted accounting principles, the American Institute of Certified Public Accountants' standards and principles prevail. ~~[The executive director shall adopt an accounting and auditing manual, and except as otherwise provided by this manual, the audit shall be performed according to the generally accepted auditing standards adopted by the American Institute of Certified Public Accountants, hereinafter referred to as generally accepted auditing standards, and shall include the auditor's representation that the financial statements have been prepared in accordance with generally accepted accounting principles as adopted by the American Institute of Certified Public Accountants, hereinafter referred to as generally accepted accounting principles.]~~

SECTION 2. (a) Section 26.122, Water Code (the text of which was to be effective until delegation of NPDES permit authority), is amended to read as follows:

Sec. 26.122. CIVIL PENALTY. A person who violates any provision of this chapter or any rule, permit, or order of the department is subject to a civil penalty of not less than \$100 [~~\$50~~] nor more than \$10,000 [~~\$1,000~~] for each act of violation and for each day of violation to be recovered as provided in this subchapter.

(b) The delegation of NPDES permit authority does not affect Section 26.122, Water Code, as amended by Subsection (a) of this section.

SECTION 3. Section 11.085, Water Code, is amended to read as follows:

Sec. 11.085. INTERWATERSHED AND INTERBASIN TRANSFERS. (a) No person may take or divert any of the water of the ordinary flow, underflow, or storm flow of any stream, watercourse, or watershed in this state into any other natural stream, watercourse, or watershed to the prejudice of any person or property situated within the watershed from which the water is proposed to be taken or diverted.

(b) No person may transfer state water beyond the river basin of origin and its adjoining coastal basins ~~[from one watershed to another]~~ without first applying for and receiving a permit from the commission to do so. Before issuing such a permit, the commission shall hold a hearing to determine the rights that might be affected by the transfer. The commission shall give notice and hold the hearing in the manner prescribed by its procedural rules.

(c) A person who takes or diverts water in violation of this section is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than \$100 nor more than \$500 or by confinement in the county jail for not more than six months.

(d) A person commits a separate offense each day he continues to take or divert water in violation of this section.

SECTION 4. Subsection (a), Section 11.134, Water Code, is amended to read as follows:

(a) After consideration of the application is complete ~~[the hearing]~~, the commission shall make a written decision granting or denying the application. The application may be granted or denied in whole or in part, and, if granted, may be for a specified term of years.

SECTION 5. Subsections (d) and (f), Section 11.143, Water Code, are amended to read as follows:

(d) Except as otherwise specifically provided by this subsection, before ~~[Before]~~ the commission may approve the application and issue the permit, it shall give notice and hold a

hearing as prescribed by this section. The commission may act on the application without holding a public hearing if all of the following conditions are met:

(1) not less than 30 days before the date of action on the application by the commission, the applicant has published the commission's notice of the application at least once in a newspaper regularly published or circulated within the section of the state where the source of water is located;

(2) not less than 30 days before the date of action on the application by the commission, the commission mails a copy of the notice by first-class mail, postage prepaid, to each person whose claim or appropriation has been filed with the department and whose diversion point is downstream from that described in the application; and

(3) within 30 days after the date of the newspaper publication of the commission's notice, a public hearing is not requested in writing by a commissioner, the executive director, or an affected person who objects to the application.

(f) If on the date specified in the notice prescribed by Subsection (d) of this section, the commission determines that a public hearing must be held, the matter shall be remanded for hearing without the necessity of issuing further notice other than advising all parties of the time and place where the hearing is to convene. ~~[The notice shall be published only once, at least 20 days before the date stated in the notice for the hearing on the application, in a newspaper having general circulation in the county where the dam or reservoir is located. At least 15 days before the date set for the hearing, the commission shall transmit a copy of the notice by first-class mail to each person whose claim or appropriation has been filed with the department and whose diversion point is downstream from that described in the application.]~~

SECTION 6. Subsection (b), Section 12.113, Water Code, is amended to read as follows:

(b) The department shall deposit all costs collected under Subchapter G [F], Chapter 11 of this code in the State Treasury to the credit of the water rights administration fund, from which the department shall pay all expenses necessary to efficiently administer and perform the duties described in Sections 11.325 through 11.335 of this code.

SECTION 7. Section 15.104, Water Code, is amended to read as follows:

Sec. 15.104. CERTIFICATE OF EXECUTIVE DIRECTOR [COMMISSION] OR APPROVAL BY EXECUTIVE DIRECTOR [COMMISSION]. (a) Except as provided by Subsection (b) of this section, the board shall not deliver funds pursuant to an application for financial assistance from the loan fund until the executive director has furnished the board written evidence ~~[political subdivision has furnished the board a resolution adopted by the commission]~~ certifying:

(1) that an applicant proposing surface-water development has the necessary water right authorizing it to appropriate and use the water that the project will provide; or

(2) that an applicant proposing underground water development has the right to use water that the project will provide.

(b) If an applicant includes a proposal for a waste water treatment plant, ~~[the part of the application relating to the waste water treatment plant does not need to be certified by the commission, but]~~ the board may not deliver funds for the waste water treatment plant until the political subdivision has obtained written evidence of approval of the plans for the waste water treatment plant from the executive director.

SECTION 8. Section 17.123, Water Code, is amended to read as follows:

Sec. 17.123. CERTIFICATE OF EXECUTIVE DIRECTOR [COMMISSION] OR APPROVAL BY EXECUTIVE DIRECTOR [COMMISSION]. (a) Except as provided in Subsection (b) of this section, the board shall not deliver funds pursuant to an application for financial assistance until the executive director has furnished the board written evidence ~~[political subdivision has furnished the board a~~

~~resolution-adopted-by-the-commission]~~ certifying:

(1) that an applicant proposing surface-water development has the necessary water right authorizing it to appropriate and use the water which the project will provide; or

(2) that an applicant proposing underground water development has the right to use water that the project will provide.

(b) If an application includes a proposal for a waste water treatment plant, ~~[the-part-of-the-application-relating-to-the-waste water--treatment--plant--does--not--need--to--be--certified--by-the commission, but]~~ the board may not deliver funds for the waste water treatment plant until the political subdivision has obtained written evidence of approval of the plans for the waste water treatment plant from the executive director.

SECTION 9. Subsection (a), Section 26.022, Water Code, is amended to read as follows:

(a) Except as otherwise provided in Sections 26.0191, 26.028, and 26.176 of this code, the provisions of this section apply to all hearings conducted in compliance with this chapter.

SECTION 10. (a) Section 26.123, Water Code (the text of which was to be effective until delegation of NPDES permit authority), is amended to read as follows:

Sec. 26.123. ENFORCEMENT BY DEPARTMENT. (a) Whenever it appears that a person has violated or is violating or is threatening to violate any provision of this chapter or any rule, permit, or order of the department, then the executive director may have a civil suit instituted in a district court for injunctive relief to restrain the person from continuing the violation or threat of violation, or for the assessment and recovery of a civil penalty of not less than \$100 [~~\$50~~] nor more than \$10,000 [~~\$1,000~~] for each act of violation and for each day of violation, or for both injunctive relief and civil penalty.

(b) On application for injunctive relief and a finding that a person is violating or threatening to violate any provision of this chapter or any rule, permit, or order of the department, the district court shall grant the injunctive relief the facts may warrant.

(c) At the request of the executive director, the attorney general shall institute and conduct a suit in the name of the State of Texas for injunctive relief or to recover the civil penalty or for both injunctive relief and penalty as authorized in Subsection (a) of this section.

(b) The delegation of NPDES permit authority does not affect Section 26.123, Water Code, as amended by Subsection (a) of this section.

SECTION 11. Subdivision (3), Section 26.211, Water Code, is amended to read as follows:

(3) "Person" means an individual, ~~[or]~~ private corporation, organization, government or governmental subdivision or agency, business trust, partnership, association, or any other legal entity.

SECTION 12. Subsection (c), Section 26.303, Water Code, is amended to read as follows:

(c) If the department enters into a contract or cooperative agreement under Section 104(c)(3) of the environmental response law, the board may ~~[shall]~~ include in the contract or agreement terms and conditions:

(1) to assure future maintenance of the removal and remedial actions provided for the expected life of those actions as determined by the federal government;

(2) to assure the availability of a hazardous waste disposal facility acceptable to the federal government that complies with Subtitle C of the federal Solid Waste Disposal Act (42 U.S.C. 6921 et seq.) for any necessary off-site storage, destruction, treatment, or secure disposition of the hazardous substances, pollutants, or contaminants; and

(3) to assure payment by the state of:
(A) 10 percent of the costs of the removal and remedial actions, including future maintenance; or

(B) at least 50 percent or more of the costs as

determined appropriate by the federal government, taking into account the degree of responsibility of the state for any amount spent in response to a release at a disposal facility that was owned by the state at the time of disposal of hazardous substances at the disposal facility.

SECTION 13. Subsection (b), Section 26.304, Water Code, is amended to read as follows:

(b) The fund shall include money appropriated to it by the legislature, [and] any [other] money received for this purpose by the department from the federal government, and all money recovered by the state under Section 26.308 of this code.

SECTION 14. Subsections (a) and (d), Section 50.371, Water Code, are amended to read as follows:

(a) The governing board of each district created under the general law or by special act of the legislature has the overall responsibility to adopt sound accounting policies, prepare reliable financial statements, and at the expense of the district, engage an independent auditor before the end of the fiscal year for an annual audit of the district's fiscal accounts and records ~~[shall have the district's fiscal accounts and records audited annually at the expense of the district]~~.

(d) The governing board of each district shall assure that the ~~[The]~~ audit required by this section shall be completed within 120 days after the close of the district's fiscal year, except for districts audited by the state auditor; district audits by the state auditor shall be completed within 12 months of the close of the district's fiscal year.

SECTION 15. Subsections (a), (b), and (c), Section 50.374, Water Code, are amended to read as follows:

(a) After the governing board of the district has approved the audit, it shall submit a copy of the report including a certificate indicating the governing board's approval of the report. The certificate must be in the format prescribed by the executive director. The governing board shall submit the report to the executive director for filing within 135 days after the close of the district's fiscal year unless the audit is performed by the state auditor, in which case it will be filed in accordance with Section 50.104 of this code.

(b) If the governing board of the district refuses to approve the annual audit report, the governing board shall submit a copy of the report, including a certificate that indicates the governing board's disapproval of the report and reasons for that disapproval. The certificate must be in the format prescribed by the executive director. The governing board shall submit the report to the executive director for filing within 135 days after the close of the district's fiscal year, except as specified in Subsection (a) of this section~~[accompanied by a statement from the board explaining the reasons for its failure to approve the report]~~.

(c) Copies of the audit or the annual financial dormancy affidavit or annual financial report described in Sections 50.377 and 50.378 of this code shall be filed annually in the office of the district and with the city secretary or other designated city official in whose extraterritorial jurisdiction the district is located. If the district is not located within the extraterritorial jurisdiction of a city, the audit, annual financial dormancy affidavit, or annual financial report shall be filed annually with the clerk of each ~~[the]~~ county within which the district is located~~[provided, however, this subsection shall not apply to any district which is located within all or parts of more than two counties, however, each such district shall file a copy of its annual audit, annual financial dormancy affidavit, or annual financial report with the county clerk of the county within which the greater part of the district resides]~~.

SECTION 16. Subsection (a), Section 50.377, Water Code, is amended to read as follows:

(a) Those districts which can satisfy all ~~[the]~~ criteria contained in this section are defined as financially dormant and may elect to submit to the executive director for filing a financial dormancy affidavit in lieu of compliance with Section

50.371 of this code:

(1) the district had \$500 or less ~~[no]~~ revenue from operations, tax assessments, or any other sources during the calendar year;

(2) the district had \$500 or less ~~[no]~~ expenditures of funds during the calendar year; ~~[and]~~

(3) the district had no bonds or any other liabilities outstanding during the calendar year; and

(4) the district had no cash or investments in excess of \$500 at any time during the calendar year.

SECTION 17. Subsection (a), Section 50.378, Water Code, is amended to read as follows:

(a) A district may elect to file annual financial reports with the executive director and the other governmental entities prescribed by Subsection (c) of Section 50.374 of this code in lieu of the district's compliance with Section 50.371 of this code provided:

(1) the district had no bonds or other long-term (more than one year) liabilities outstanding during the fiscal period;

(2) the district did not have gross revenues in excess of \$20,000 ~~[\$5,000]~~ during the fiscal period; and

(3) the district's cash~~[, -receivables,]~~ and temporary investments were not in excess of \$50,000 at any time ~~[\$20,000]~~ during the fiscal period.

SECTION 18. Subsection (e), Section 4, Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes), is amended to read as follows:

(e) Except as provided in Subsection (f) of this section with respect to certain industrial solid wastes, each state agency has the power to require and issue permits authorizing and governing the construction, operation, and maintenance of solid waste facilities used for the storage, processing, or disposal of solid waste. This power may be exercised by a state agency only with respect to the solid waste over which it has jurisdiction under this Act. If this power is exercised by a state agency, that state agency shall prescribe the form of and reasonable requirements for the permit application and the procedures to be followed in processing the application, to the extent not otherwise provided for in this subsection. The following additional provisions apply if a state agency exercises the power authorized in this subsection.[-]

(1) The state agency to whom the permit application is submitted shall mail a copy of the application or a summary of its contents to the Texas Air Control Board, to the other state agency, to the mayor and health authorities of any city or town within whose territorial limits or extraterritorial jurisdiction the solid waste facility is located, and to the county judge and health authorities of the county in which the facility is located. The governmental entities to whom the information is mailed shall have a reasonable time, as prescribed by the state agency to whom the application was originally submitted, to present comments and recommendations on the permit application before that state agency acts on the application.

(2) A separate permit shall be issued for each solid waste facility. The permit shall include the names and addresses of the person or persons who own the land where the solid waste facility is located and the person who is or will be the operator or person in charge of the facility; a legal description of the land on which the facility is located; and the terms and conditions on which the permit is issued, including the duration of the permit. The state agency in its discretion shall have the power to process a permit application for purpose of determining land use compatibility alone, and at another time, if the site location is acceptable, consider technical matters related to the application. Where this power is exercised, a public hearing may be held for each determination in accordance with Paragraph (4) of this Subsection (e).

(3) The state agency may amend, extend, or renew any permit it issues in accordance with reasonable procedures prescribed by the state agency. The procedures prescribed in Paragraph (1) of

1 this Subsection (e) for permit applications apply also to
2 applications to amend, extend, or renew a permit.

3 (4) Before a permit is issued, amended, extended, or
4 renewed, the state agency to which the application is submitted
5 shall provide an opportunity for a hearing to the applicant and
6 persons affected; the state agency may also hold such a hearing
7 upon its own motion. The state agency by rule shall establish
8 procedures for public notice and any public hearing authorized
9 under this paragraph. A hearing on a permit involving a solid
10 waste facility for hazardous industrial solid waste must include
11 one session held in the county in which the solid waste facility is
12 located. Hearings under this paragraph shall be conducted in
13 accordance with the hearing rules adopted by the state agency and
14 the applicable provisions of the Administrative Procedure and Texas
15 Register Act, as amended (Article 6252-13a, Vernon's Texas Civil
16 Statutes).

17 (5) Before a permit is issued, amended, extended, or
18 renewed, the state agency to which the application is submitted may
19 require the permittee to execute a bond or give other financial
20 assurance conditioned on the permittee's satisfactorily operating
21 and closing the solid waste facility. The state agency to which
22 the application is submitted shall require an assurance of
23 financial responsibility as may be necessary or desirable
24 consistent with the degree and duration of risks associated with
25 the processing, storage, or disposal of specified solid waste.
26 Financial requirements established by the state agency shall at a
27 minimum be consistent with the federal requirements established
28 under the federal Solid Waste Disposal Act, as amended by the
29 Resource Conservation and Recovery Act of 1976, 42 U.S.C., 6901 et
30 seq., as amended.

31 (6) If a permit is issued, amended, renewed, or extended by
32 a state agency in accordance with this Subsection (e), the owner or
33 operator of the solid waste facility does not need to obtain a
34 license for the same facility from a county, or from a political
35 subdivision exercising the authority granted in Section 6 of this
36 Act.

37 (7) A permit issued under this Act is issued only to the
38 person in whose name the application is made and is issued only for
39 the facility described in the permit. A permit may not be
40 transferred without prior written notice to and prior written
41 approval by the state agency which issued it.

42 (8) The state agency has the authority, for good cause, to
43 revoke or amend any permit it issues for reasons pertaining to
44 public health, air or water pollution, land use, or violation of
45 this Act or of any other applicable laws or rules controlling the
46 management of solid waste. The state agency using this authority
47 shall notify the governmental entities named in Paragraph (1) of
48 this Subsection (e) and provide an opportunity for a hearing to the
49 permittee and persons affected. The state agency may hold such a
50 hearing upon its own motion. The state agency by rule shall
51 establish procedures for public notice and any public hearing
52 authorized under this paragraph. Hearings under this paragraph
53 shall be conducted in accordance with the hearing rules adopted by
54 the state agency and the applicable provisions of the
55 Administrative Procedure and Texas Register Act, as amended
56 (Article 6252-13a, Vernon's Texas Civil Statutes).

57 (9) Manufacturing and processing establishments, commonly
58 known as rendering plants, which process for any purpose waste
59 materials originating from animals, poultry, and fish (all
60 hereinafter referred to as "animals") and materials of vegetable
61 origin, including without limitation animal parts and scraps,
62 offal, paunch manure, and waste cooking grease of animal and
63 vegetable origin are subject to regulation under the industrial
64 solid waste provisions of this Act and may also be regulated under
65 Chapter 26, Water Code. When a rendering establishment is owned by
66 a person who operates the rendering establishment as an integral
67 part of an establishment engaged in manufacturing or processing for
68 animal or human consumption food derived wholly or in part from
69 dead, slaughtered, or processed animals, poultry, or fish, the
70 combined business may operate under authority of a single permit

issued pursuant to Chapter 26, Water Code. The provisions of this subsection do not apply to those rendering plants in operation and production on or before August 27, 1973.

(10) Each state agency may issue an emergency order, either mandatory or prohibitory in nature, regarding any activity of solid waste management within its jurisdiction, whether such activity is covered by a permit or not, if the state agency determines that the activity is creating or will cause extensive or severe property damage or economic loss to others or is posing an immediate and serious threat to human life or health and that other procedures available to the state agency to remedy or prevent the occurrence of the situation will result in unreasonable delay. The order may be issued without notice and hearing, or with such notice and hearing as the state agency deems practicable under the circumstances.

(i) If an emergency order is issued under this authority without a hearing, the issuing agency shall fix a time and place for a hearing to be held in accordance with the departmental rules by the state agency, so as to affirm, modify, or set aside the emergency order.

(ii) The requirements of Paragraph (4) of this subsection relating to public notice do not apply to such a hearing, but such general notice of the hearing shall be given in accordance with the departmental rules of the state agency.

SECTION 19. Subsection (a), Section 5, Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) Every county has the solid waste management powers which are enumerated in this Section 5. However, the exercise of the licensing authority and other powers granted to counties by this Act does not preclude the department or the department of water resources from exercising any of the powers vested in the department or the department of water resources under other provisions of this Act, including specifically the provisions authorizing the department and the department of water resources to issue permits for the construction, operation, and maintenance of facilities for the processing, storage, or disposal of solid waste. The powers specified in Subsections (d) and (e) of this section and Section 18 of the County Solid Waste Control Act (Article 4477-8, Vernon's Texas Civil Statutes) may not be exercised by a county with respect to the industrial solid waste disposal practices and areas to which Subsection (f) of Section 4 of this Act applies. The department or the department of water resources, by specific action or directive, may supersede any authority or power granted to or exercised by a county under this Act, but only with respect to those matters which are, under this Act, within the jurisdiction of the state agency acting.

SECTION 20. Subdivision (6), Subsection (a), Section 8, Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes), is amended to read as follows:

(6) A suit for injunctive relief or for recovery of a civil penalty, or for both injunctive relief and penalty, may be brought either in the county where the defendant resides or in the county where the violation or threat of violation occurs. In any suit brought to enjoin a violation or threat of violation of this Act or of any rule, permit, license or other order of the department of water resources, the department, a county, or a political subdivision exercising the authority granted in Section 6 of this Act, the court may grant the governmental entity bringing the suit, without bond or other undertaking, any prohibitory or mandatory injunction the facts may warrant, including temporary restraining orders [~~after--notice--and--hearing~~], temporary injunctions, and permanent injunctions.

SECTION 21. Chapter 5, Water Code, is amended by adding Section 5.358 to read as follows:

Sec. 5.358. LIABILITY OF DEPARTMENT. The department, including the board, commission, and executive director, and its employees and agents are not liable for any damages that may occur, in whole or in part, as a result of acts done or omitted, any decision made, or policy made or followed in a good faith effort to

1 carry out this code and other laws of this state.

2 SECTION 22. Chapter 11, Water Code, is amended by adding
3 Section 11.1221 to read as follows:

4 Sec. 11.1221. SECONDARY USE AUTHORIZATION REQUIRED. Any
5 reuse of state water for purposes other than those authorized by
6 the water right may be made only if authorized by the commission
7 through the granting of a water right or amendment to a water
8 right.

9 SECTION 23. Section 26.028, Water Code, is amended by adding
10 Subsections (e) and (f) to read as follows:

11 (e) In the notice prescribed by Subsection (a) of this
12 section, the commission shall:

- 13 (1) state the name and address of the applicant;
14 (2) state the location of the applicant's facilities
15 or operations;
16 (3) identify the nature of the application;
17 (4) specify the time and location where the commission
18 will consider the application; and
19 (5) give any additional information the commission
20 considers necessary.

21 (f) If, on the date specified in the notice prescribed by
22 Subsection (e) of this section, the commission determines that a
23 public hearing must be held, the matter shall be remanded for
24 hearing without the necessity of issuing further notice other than
25 advising all parties of the time and place where the hearing is to
26 convene.

27 SECTION 24. Section 26.212, Water Code (the text of which is
28 effective until delegation of NPDES Authority), is amended by
29 adding Subsection (c) to read as follows:

30 (c) No person may knowingly make any false statement,
31 representation, or certification in any application, notice,
32 record, report, plan, or other document filed or required to be
33 maintained under this chapter, or under any rule, permit, or other
34 order of the department.

35 SECTION 25. Chapter 26, Water Code, is amended by adding
36 Section 26.308 to read as follows:

37 Sec. 26.308. LIABILITY AND STATE RECOVERY OF COSTS. (a) As
38 used in this section, "owner," "operator," "disposal," "transport,"
39 "national contingency plan," and "natural resources" have the
40 meanings provided by the environmental response law.

41 (b) Notwithstanding any other law, and subject to the
42 defenses provided by Section 107(b) of the environmental response
43 law, any person listed in Subsection (c) of this section shall be
44 liable for:

45 (1) all costs of removal or remedial action incurred
46 by this state that are not inconsistent with the national
47 contingency plan; and

48 (2) damages for injury to, destruction of, or loss of
49 natural resources, including the reasonable costs of assessing that
50 injury, destruction, or loss resulting from the release.

51 (c) The persons who are liable under Subsection (b) of this
52 section are:

53 (1) an owner or operator of a disposal facility from
54 which there is a release or a threatened release of a hazardous
55 substance that causes the occurrence of response costs;

56 (2) a person who at the time of disposal of a
57 hazardous substance owned or operated a disposal facility at which
58 those hazardous substances were disposed of and from which there is
59 a release, or a threatened release of a hazardous substance that
60 causes the occurrence of response costs;

61 (3) a person who, by contract, agreement, or
62 otherwise, arranged with a transporter for transport for disposal
63 or treatment of hazardous substances owned or possessed by that
64 person, or by any other party or entity, at any disposal facility
65 owned or operated by another party or entity and containing such
66 hazardous substances, from which there is a release or a threatened
67 release of a hazardous substance that causes the occurrence of
68 response costs; and

69 (4) any person who accepts or accepted any hazardous
70 substances for transport to disposal or treatment facilities or

1 sites selected by that person from which there is a release or
2 threatened release of a hazardous substance that causes the
3 occurrence of response costs.

4 (d) The executive director may request that the attorney
5 general institute a suit in a district court in Travis County
6 against a person listed in Subsection (c) of this section to
7 recover the state's costs and damages under Subsection (b) of this
8 section.

9 (e) At the request of the executive director, the attorney
10 general shall institute and conduct a suit in the name of the State
11 of Texas to recover the state's costs and damages under Subsection
12 (b) of this section.

13 SECTION 26. Section 26.122, Water Code (the text of which
14 was to take effect on delegation of NPDES permit authority), as
15 follows, is repealed:

16 [See-26.122.--CIVIL-PENALTY.--(a)--A-person-who-violates-any
17 provision--of-this-chapter,--other-than-Subsection-(d)--or-Subsection
18 (e)--of-Section-21.251,--or-who-violates-any-rule,--permit,--or--order
19 of--the--department--is-subject-to-a-civil-penalty-of-not-less-than
20 \$50--nor-more-than-\$1,000--for-each-act-of-violation-and-for-each-day
21 of-violation-to-be-recovered-as-provided-in-this-subchapter.

22 [(b)--A-person-who-violates-Subsection-(d)--or-Subsection--(e)
23 of--Section-21.251-of-this-chapter-is-subject-to-a-civil-penalty-of
24 not-more-than-\$10,000--for-each-act-of-violation-and-for-each-day-of
25 violation,--to-be-recovered--as--provided--in--this--subchapter,
26 provided,--however,--that--in--suits--instituted--pursuant--to-this
27 subsection,--the-civil-penalty,--if-any,--assessed-against-the--person
28 who--committed--or-who-is-committing-the-violation-shall-be-no-more
29 than-\$1,000--for-each-act-of-violation-and-for-each-day-of-violation
30 where-the-violation-is-of-a-limitation-or-condition-included--in--a
31 permit--issued--by--the--department--prior--to--delegation--by--the
32 Administrator-of-the-United-States-Environmental-Protection--Agency
33 of-NPDES-permit-authority-under-Section-402(b)--of-the-Federal-Water
34 Pollution--Control--Act,--or-of-any-limitation-or-condition-included
35 in-an-identified-state-supplement-to-an-NPDES-permit--issued--after
36 NPDES--permit--delegation-by-the-Administrator-of-the-United-States
37 Environmental-Protection-Agency.]

38 SECTION 27. Section 26.123, Water Code (the text of which
39 was to take effect on delegation of NPDES permit authority), as
40 follows, is repealed:

41 [See-26.123.--ENFORCEMENT-BY-DEPARTMENT.--(a)---Whenever--it
42 appears---that--a-person--has--violated--or--is--violating--or--is
43 threatening-to-violate-any-provision-of-this--chapter,--other--than
44 Subsection-(d)--or-Subsection-(e)--of-Section-21.251,--or-has-violated
45 or-is-violating,--or-is-threatening-to-violate,--any-rule,--permit,--or
46 order--of--the--department,--then-the-executive-director-may-have-a
47 civil-suit-instituted-in-a-district-court-for-injunctive-relief--to
48 restrain--the--person--from--continuing--the-violation-or-threat-of
49 violation,--or-for-the-assessment-and-recovery-of-a-civil-penalty-of
50 not-less-than-\$50--nor-more-than-\$1,000--for-each--act--of--violation
51 and--for--each--day-of-violation,--or-for-both-injunctive-relief-and
52 civil-penalty.

53 [(b)---Whenever-it-appears-that-a-person-has--violated--or--is
54 violating,---or--is--threatening--to--violate,--Subchapter--(d)--or
55 Subchapter--(e)--of--Section--21.251--of--this--chapter,--then--the
56 executive--director--may-have-a-civil-suit-instituted-in-a-district
57 court-for-injunctive-relief-to-restrain-the-person-from--continuing
58 the--violation--or--threat--of-violation,--or-for-the-assessment-and
59 recovery-of-a-civil-penalty-of-not-more-than-\$10,000--for--each--act
60 of--violation-and-for-each-day-of-violation,--or-for-both-injunctive
61 relief--and--civil--penalty,--provided,--however,--that--in---suits
62 instituted--pursuant-to-this-subsection,--the-civil-penalty,--if-any,
63 assessed-against-the-person-who-committed-or-who-is-committing--the
64 violation--shall--be--no-more-than-\$1,000--for-each-act-of-violation
65 and-for--each--day--of--violation--where--the--violation--is--of--a
66 limitation--or--condition--included-in-a-permit-issued-by-the-board
67 prior-to-delegation-by--the--Administrator--of--the--United--States
68 Environmental--Protection--Agency--of--NPDES-permit-authority-under
69 Section-402(b)--of-the-Federal-Water-Pollution-Control--Act,--or--of
70 any--limitation--or--condition--included--in--an--identified--state

1 supplement-to-an-NPDES-permit-issued-after-NPDES-permit--delegation
 2 by--the-Administrator-of-the-United-States-Environmental-Protection
 3 Agency-

4 [(c) --On-application-for-injunctive-relief-and-a-finding-that
 5 a-person-is-violating-or-threatening-to-violate--any--provision--of
 6 this--chapter--or-any-rule,-permit,-or-order-of-the-department,-the
 7 district-court-shall-grant-the--injunctive--relief--the--facts--may
 8 warrant-

9 [(d) --At--the-request-of-the-executive-director,-the-attorney
 10 general-shall-institute-and-conduct-a-suit-in-the-name-of-the-State
 11 of-Texas-for-injunctive-relief-or-to-recover-the-civil--penalty--or
 12 for--both-injunctive-relief-and-penalty-as-authorized-in-Subsection
 13 (a)-or-(b)-of-this-section-]

14 SECTION 28. (a) This Act takes effect September 1, 1983,
 15 and applies only to applications filed on or after that date.
 16 Applications filed with the Texas Department of Water Resources
 17 before September 1, 1983, are governed by the law that was in
 18 effect at the time the application was filed, and that law is
 19 continued in effect for that purpose.

20 (b) This Act applies only to a violation committed on or
 21 after September 1, 1983. Violations committed before September 1,
 22 1983, are subject to the laws that existed at the time the
 23 violation occurred, and those laws are continued in effect for that
 24 purpose. For the purpose of this Act, a violation occurs before
 25 September 1, 1983, if any element of the violation occurs before
 26 that date.

27 SECTION 29. The importance of this legislation and the
 28 crowded condition of the calendars in both houses create an
 29 emergency and an imperative public necessity that the
 30 constitutional rule requiring bills to be read on three several
 31 days in each house be suspended, and this rule is hereby suspended.

32 * * * * *

33 Austin, Texas
 34 May 24, 1983

35 Hon. William P. Hobby
 36 President of the Senate

37 Sir:

38 We, your Committee on Natural Resources to which was referred H.B.
 39 No. 1585, have had the same under consideration, and I am
 40 instructed to report it back to the Senate with the recommendation
 41 that it do pass, as amended, and be printed.

42 Santiesteban, Chairman

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE

April 12, 1983

Honorable Tom Craddick, Chair
Committee on Natural Resources
House of Representatives
Austin, Texas

In Re: House Bill No. 1585
By: Craddick

Sir:

In response to your request for a Fiscal Note on House Bill No. 1585 (relating to the jurisdiction, powers, and duties of and the enforcement by the Texas Department of Water Resources; providing penalties) this office has determined the following:

No significant fiscal implication to the State or units of local government is anticipated.


Jim Oliver
Director

Source: Department of Water Resources, LBB Staff: JO, JH, NRH, bdt

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE

April 18, 1983

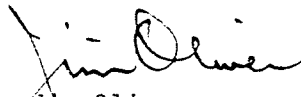
Honorable Tom Craddick, Chair
Committee on Natural Resources
House of Representatives
Austin, Texas

In Re: Committee Substitute for
House Bill No. 1585
By: Craddick

Sir:

In response to your request for a Fiscal Note on Committee Substitute for House Bill 1585 (relating to the jurisdiction, powers, and duties of and the enforcement by the Texas Department of Water Resources) this office has determined the following:

No significant fiscal implication to the State or units of local government is anticipated.


Jim Oliver
Director

Source: Department of Water Resources;
LBB Staff: JO, JH, NRH, DM

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE

May 20, 1983

Honorable H. Tati Santiesteban, Chairman
Committee on Natural Resources
Senate Chamber
Austin, Texas

In Re: House Bill No. 1585,
as engrossed
By: Craddick

Sir:

In response to your request for a Fiscal Note on House Bill 1585, as engrossed (relating to the jurisdiction, powers, and duties of and the enforcement by the Texas Department of Water Resources) this office has determined the following:

No significant fiscal implication to the State or units of local government is anticipated.


Jim Oliver
Director

Source: Department of Water Resources;
LBB Staff: JO, JH, NRH, PA

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE

May 20, 1983

Honorable H. Tati Santiesteban, Chairman
Committee on Natural Resources
Senate Chamber
Austin, Texas

In Re: House Bill No. 1585,
as engrossed
By: Craddick

Sir:

In response to your request for a Fiscal Note on House Bill 1585, as engrossed (relating to the jurisdiction, powers, and duties of and the enforcement by the Texas Department of Water Resources) this office has determined the following:

No significant fiscal implication to the State or units of local government is anticipated.


Jim Oliver
Director

Source: Department of Water Resources;
LBB Staff: JO, JH, NRH, PA

**REQUEST FOR LOCAL & UNCONTESTED CALENDAR
PLACEMENT**

Hon. Roy Blake, Chairman
Administration Committee

Sir:

Pursuant to S.R. 148, notice is hereby given that HB 1585, by: Craddick(Howard)
was heard by the Committee on Natural Resources on May 23, 1983
and reported out with the recommendation that it be placed on the Local and Uncontested
Calendar.

Chairman of the reporting committee

IMPORTANT: THIS FORM MUST BE ATTACHED TO A PRINTED COPY OF THE BILL
OR RESOLUTION, WHICH ALONG WITH 7 ADDITIONAL COPIES OF THE BILL OR
RESOLUTION SHOULD BE DELIVERED TO THE OFFICE OF THE COMMITTEE ON
ADMINISTRATION, ROOM G-27J. PLEASE CALL 5-1134 IF YOU HAVE ANY
QUESTIONS. **DEADLINE FOR SUBMITTING BILLS FOR THE LOCAL CALENDAR IS**
5:00 P.M. MONDAYS.

H. B. No.

1585

By

Craddick

A BILL TO BE ENTITLED

AN ACT

relating to the jurisdiction, powers, and duties of and the enforcement by the Texas Department of Water Resources; providing penalties.

MAR 9 1983

1. Filed with the Chief Clerk.

MAR 23 1983

2. Read first time and Referred to Committee on

Natural Resources

APR 13 1983

3. Reported ^{favorably} ~~favorably~~ (as amended) and sent to Printer at 9:10 am ^{APR 18 1983}
(as substituted)
AS substituted

APR 18 1983

4. Printed and distributed at 12:57 pm

APR 18 1983

5. Sent to Committee on Calendars at 4:19 p.m. ^{LRC}

MAY 13 1983

6. Read second time ~~(amended)~~; passed to third reading ~~(failed)~~ by (Non-Record Vote) ^{as substituted}
(Record Vote of _____ years, _____ nays, _____ present, not voting)

7. Motion to reconsider and table the vote by which H.B. _____ was ordered engrossed prevailed (failed) by a (Non-Record Vote) (Record Vote of _____ years, _____ nays, and _____ present, not voting).

8. Constitutional Rule requiring bills to be read on three several days suspended (failed to suspend) by a four-fifths vote of _____ years, _____ nays, and _____ present, not voting.

MAY 13 1983

9. Read third time ~~(amended)~~; finally passed ~~(failed)~~ by (Non-Record Vote) ~~(Record Vote)~~
of _____ years, _____ nays, _____ present, not voting).

10. Caption ordered amended to conform to body of bill.

11. Motion to reconsider and table the vote by which H. B. _____ was finally passed prevailed (failed) by a (Non-Record Vote) (Record Vote of _____ years, _____ nays, and _____ present, not voting).

MAY 13 1983

12. Ordered Engrossed at 3:15 pm

MAY 15 1983

13. Engrossed.

MAY 15 1983

14. Returned to Chief Clerk at 11:09 am

MAY 16 1983

15. Sent to Senate.

Betty Murray
Chief Clerk of the House

MAY 16 1983

16. Received from the House

MAY 17 1983

17. Read, referred to Committee on NATURAL RESOURCES

MAY 24 1983

18. Reported favorably as amended

19. Reported adversely, with favorable Committee Substitute; Committee Substitute read first time.

20. Ordered not printed.

21. Regular order of business suspended by

(a viva voce vote.)

_____ years, _____ nays.)

MAY 27 1983 Motion to suspend Regular
Order lost by 15 yeas 16 nays

_____ 22. To permit consideration, reading and passage, Senate and Constitutional Rules
suspended by vote of _____ yeas, _____ nays.

_____ 23. Read second time _____ passed to third reading by:
(a viva voce vote.)
(_____ yeas, _____ nays.)

_____ 24. Caption ordered amended to conform to body of bill.

_____ 25. Senate and Constitutional 3-Day Rules suspended by vote of _____ yeas,
_____ nays to place bill on third reading and final passage.

_____ 26. Read third time and passed by
(a viva voce vote.)
(_____ yeas, _____ nays.)

OTHER ACTION:

OTHER ACTION:

Secretary of the Senate

_____ 27. Returned to the House.

_____ 28. Received from the Senate (with amendments.)
(as substituted.)

_____ 29. House (Concurred) (Refused to Concur) in Senate (Amendments) by a (Non-Record
(Substitute) Vote) (Record Vote of _____ yeas, _____ nays, _____ present,
not voting).

_____ 30. Conference Committee Ordered.

_____ 31. Conference Committee Report Adopted (Rejected) by a (Non-Record Vote) (Record
Vote of _____ yeas, _____ nays, and _____ present, not voting).

_____ 32. Ordered Enrolled at _____

HOUSE OF REPRESENTATIVES

1983 MAY 15 AM 11:08

HOUSE OF REPRESENTATIVES
1983 APR 18 PM 12:51